

**THE UNIVERSITY OF THE SOUTH PACIFIC
LIBRARY
Author Statement of Accessibility- Part 2- Permission for Internet
Access**

Name of Candidate: Telea Kamu Tapuai Potogi

Degree: Master of Arts in History and Politics

Department/School: Faculty of Arts, Law and Education

Institution/University: University of the South Pacific

Thesis Title: O Tiafau o le Malae o le Fa'autugatagi a Samoa, "A Study of the Impact of the Land and Titles Court's Decisions Over Customary Land and Family Titles."

Date of completion of requirements for award: 30th August, 2014

1. I authorize the University to make this thesis available on the Internet for access by USP authorized users. **Yes/No**

2. I authorize the University to make this thesis available on the Internet under the International digital theses project - **Yes/No**

Signed: 

Date: 13th November, 2014

Contact Address
Ministry of Women, Community & Social Development
Private Bag
Tel: 27752/27753

Permanent Address
Telea Kamu Tapuai Potogi
P.O Box 9370
APIA, SAMOA

Under 10%

**O TIAFAU
O LE MALAE O LE FA'AUTUGATAGI
A SAMOA:**

**A STUDY OF THE IMPACT OF THE LAND AND TITLES
COURT'S DECISIONS OVER CUSTOMARY LAND AND
FAMILY TITLES**

by

Telea Kamu Tapuai Potogi

A thesis submitted in fulfillment of the
requirement for the degree of
Master of Arts

Copyright © 2014 by Telea Kamu Tapuai Potogi

School of Social Sciences
Faculty of Arts, Law & Education
The University of the South Pacific

August 2014

DECLARATION

I, Telea Kamu Tapuai Potogi, declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published, or substantially overlapping with material submitted for the award of any other degree at any institution, except where due acknowledgement is made in the text.

Signature.....Date.....

Name

Student ID No.

The research in this thesis was performed under my supervision and to my knowledge is the sole work of Mr. Telea Kamu Tapuai Potogi.

Signature.....Date.....

Name

Designation

Upu Tomua

Le Atua Silisili ese, fa'afetai ua e apelepelea i matou i ou aao alofa, ua le afea i matou e se atua folau o le ala. O le fa'afetai o le fiafia aua ua gase le tausaga, ua mou atu fo'i peau lagavale ma atua folau sa lamatia le faigamalaga. O lenei ua tini pao le uto pei o le faiva i vai. Mua ia mua o ma fa'asao i le Atua o le Mataisau o le potou ma le atamai. O Lona agalelei, o le alofa le fa'atuaioia ma le pule fa'asoasoa ua mafai ai ona taulau o lenei fa'amoemoe. O lenei sailiiliga o se amata mea, o ni manatu le tua ma le vaivai. E tapena fa'atufuga le galuega ae matua lava i le Agaiotupu o le Atua mea uma. O le atoatoaga o lenei sailiiliga o le faiva fai fa'atasi lea o Samoa o lo'o atinaeina le manuia o Aiga, Nu'u, Ekalesia ma le Malo.

Ou te fa'afetai atu i le paia ma le mamalu ia i latou na fa'amalosiau mo le fa'ataunuuina o lenei fa'amoemoe. Aemaise le fesoasoani a le Matagaluega o Fa'amasinoga o Fanua ma Suafa i sailiiliga a'o ou galue ai. O lenei fa'amoemoe ia aoga lenei galuega mo le lumanai manuia o Samoa i le fa'atinoina o galuega o lo'o feagai ma tamalii, alo ma fanau o lo'o sailia le gaosa o measina a Samoa i le Matagaluega o Fa'amasinoga o Fanua ma Suafa.

Avea lenei avanoa e fa'amaualalo atu ai i le paia, i Aiga ma o latou Tama, Tama ma o latou Aiga. Aiga o Tupu ma E'e, Aiga o Papa ma Aiga o Nofo fa'apea le usoga ia Tumua ma Pule, Ituaui ma Alataua, Aiga i le Tai ma le Va'a o Fonoti. Ae tainane, le paia i Auauna o le Talalelei o lo'o nono manu mo le soifua filemu o Samoa.

E talitonu e le a'ua'u le galuega e fa'afaileleina ai ni lelei mo se manuia o Samoa. E ui lava ina potou le tautai ae le atoa i'a i le liu o lona va'a. O se upu o lenei galuega ua afaina ai se finagalo; ia fale i le malumalu o le Atua. E mu'a le auauna i ona manatu, fa'amolemole fa'amagalo mai.

Dedication

This thesis is dedicated to my Grandparents:

Rev, Kamu Tagaolo Wright and Sina Kamu Wright,

Rev, Fa'avesi T. Talamaivao and Lafoaluga F. Talamaivao

and to my parents:

My father, Tapuai Taveuveu Potogi Fa'avesi and

My mother, Unaita Tapuai T.P.F. and to my extended family.

'Aimer c'est la moitié de croire'

'To love is the other half of believing'

Acknowledgment

I wish to acknowledge with sincere thanks and a deep debt of gratitude to the many people who have given me assistance and encouragement during the writing of this thesis. First I would like to offer special thanks to my supervisor Dr. Atoese Morgan Tuimaleali'ifano for his challenging opinions and guidance, in reading through numerous drafts of disconnected thoughts. Dr Tuimaleali'ifano offered many helpful suggestions, regarding sources to fill the gaps in the thesis and to bring vivid ideas to produce this work in its final form. I also thank him for his patience throughout this work. I am also grateful to Professor Lau Asofou So'o for his contribution and the inputs given during the writing.

My sincere thanks to Dr Amaamalele Tofaeono, Dr Apelu Poe and Leulua'i Tasi Malifa for their helpful contributions and moral support. Sincere thanks goes to all the students who have in many ways contributed to the production of this work. I am deeply grateful of those who gave me much to cheer about when writing became frustrating, especially to Rev. Solomona Potogi, Rev. Mosese Mailo, Rev Arthur Wulf, Rev Latu Latai, Afamasaga Michael So'onaloale, Roger Toleafoa, Sitivi Kamu Wright, Pemerika Tauiliili, Ofoia Nomeneta Leuila, Foketi Imo, Leiatualesa Tofae Alailima Nuualiitia and Leiatua Semi Lesa. I do not forget the hospitality of Dr Desmond and Palepa Amosa, Tulitau and Senetima Vaitoelau, Toetu and Valerie Tuia and Dr Amaamalele and Alleluia Joan Tofaeono by offering food and drink and for putting up with me at the frustrating time of this work. Special thanks to the Pacific Theological College which offered me a place to stay and the wonderful ethnic communities who shared their lives with me spiritually. I received so much advice, assistance and hospitality during the study that it is impossible for me to acknowledge individually all who helped. I trust that those not named above will accept my thanks *Vinaka vaka levu, Malo aupito.*

From the bottom of my heart my *fa'afetai fa'apitoa* to my whole family and especially to my parents for their prayers and words of encouragement. I know I made life insupportable to our family, but thank you for your support as I struggle for academic fulfillment. Special thanks to Donna Lalomilo Kamu for her assistance in editing the thesis. I know without your help the

words would not make sense. My special thanks to the Department of the Land and Titles Court. I am sure I owe a lot of debts for the working experience of the last seven years. *Fa'afetai* for allowing me to work and absorb the experiences so I have been able to write this thesis. Thanks for access to the files so I could search and use them for my research.

Last but not least, a big *fa'afetai tele lava* goes to the Government of Samoa. Thank you for granting me the scholarship and financial support to continue my study at the University of the South Pacific, Fiji. I hope that I will be able to use the knowledge and skills I have acquired to help the Government and Samoa in whatever area, in the very near future. *Malo tatalo, malo le tapuai, fa'afetai tele lava.*

Ia i le Atua pea le viiga e o'o i le fa'avavau.

Abstract

The Land and Titles Act of 1981 is the single most important instrument governing the operation of the customary and family titles court of Samoa. A better understanding of the operation of the Court according to the Act is important because land, apart from the sea, is the main resource possessed by Samoans for development. Eighty – one (81%) percent of Samoan land is held under customary tenure and controlled by family titled heads known as *matai*.

The thesis examines the Act and its impact on the operation of the court and the extent to which power unwittingly gravitates to Judges, Assessors and the Court officials as they create and re-create customs in the absence of a clear definition while they attempt to resolve family titles and customary land disputes. The thesis explains the shortcoming inherent in the Act and the way it is interpreted by court officials in the day to day implementation of the Act. It also looks at the tensions between the traditional authority and introduced democracy in relation to fundamental individual rights and freedom of religion. When ownership of family titles are disputed, the security of family members are threatened, land and related resources are often tied up pending court settlements. The thesis documents the operation and proceedings of the Court in arriving at settlements and explores the tension existing between the Act and the perspectives of the court officials in the way they interpret the Act.

The thesis argues that the decision making of the Land and Titles Court is based on *aganu'u ma agai'fanua* (custom and usage) but the determination of custom and usage is not defined in the Act. In the absence of the definition, the role of Samoan court officials and judges assume considerable importance because their perception and interpretation defines and determines custom and usage affecting *aiga* (families), *nu'u* (villages), *lotu* (church), *itumalo* (districts) and Samoa as a whole. The definition and determination of custom and usage are fraught with difficulties and because they are made by court officials and judges sitting as *matai*. Consequently, their determinations are prone to be subjected to a wide range of interpretation and applications. These difficulties lie at the core of this examination and as such, I contend, speaks to the heart of Samoa's development efforts.

Preface and Summary of Chapters

The Land and Titles Court was established to settle family disputes on customary land and titles. The number of disputes continues to pile up yearly. My interest in the topic stems from witnessing the increasing volumes of family and village disputes before the Court and the diverse range of perspectives and techniques Samoans employ through the use of their *aiga* (family), *nu'u* (village) *lotu* (church) and the *Fa'amasinoga o Fanua ma Suafa* (Department of Land and Titles Court) to secure a decision favorable to the present. My seven (7) years of work experience at the Land and Titles Court Department (1997 – 2004) has given me additional advantage to conduct research on this topic. However, I realize that my work experience and as insider had disadvantages for it can make me blind to some issues, some of which are clearly identified by outsiders. I allude to the work of Dr Solf, Dr Eric Schultz and Charles Marsack to name a few during the colonial administrations in Samoa. For example, a local person may be too immersed in the local culture that the objectivity needed to evaluate the evidence may not always be available and hence the need to refer to outsiders for a second opinions.

The thesis is structured into eight (8) chapters.

Chapter one (1) introduces the problem and provides the background.

Chapter two (2) is the Literature Review of the Land and Titles Court.

Chapter three (3) discusses the procedures and jurisdiction of the Land and Titles Act 1981 in relation to the court's function and roles, concerning custom and usages. It explains the position of the Land and Titles Court in the Constitution and the creation of the institution as judicial mechanism to settle customary disputes within the society. It emphasizes the dual systems based on *tulafono fa'apapalagi* (western law) and *aganu'u ma agaifanua* (custom and usages). It also examines the work of the Samoan Judges in dealing with decisions amongst the families in the community. These are done through case studies illustrating how

the Act is interpreted in the daily working of the court and what factors influences the outcome.

Chapter four (4) discusses a case study about the way the court deals with a case brought by villagers claiming violation of their human rights by the village council with respect to movement, residence and religious freedom. Two separate but related cases from different villages (Falealupo and Saipipi) will be examined to show how the court determines between the right of villagers as individuals on freedom of religion and village council's ruling on established churches.

Chapter five (5) is a case study of a domestic dispute which leads to the removal of a family from their customary land by the village council and the role of the Court settling the issue.

Chapter six (6) is a case study over the *pule* of the prominent *matai* title involving a paramount titular *matai* (Malietoa Tanumafili II then Head of State) and a powerful orator *matai* (Toelupe Vaito'a – title of Malie village). Both parties contested the *pule fa'avae* (constitutive authority) of the Toelupe title and the role of the Court on this issue is examined according to the Act.

Chapter seven (7) discusses the role of the Court on a dispute over a Government land. The case study of Leauva'a village elaborates the uncertain situation of the authority between the *sa'o* (principal *matai*) and the *tulafale* (orator) within the same family over a parcel of government land grant to which both have rights. The dispute over the *pule* of a piece of land at Leauvaa between the chief and the orator within the same family. This conflict reflects confusion of the decision of the Land and Titles Court of the land grants by Government to village under the authority of the village council to the *matai* title who firstly settled the piece of land (Leauvaa).

Chapter eight (8) discusses the difference between the rules in the Land and Titles Act 1981 and the court practice over *pulefa'amau* on customary land. The case study over the application to register customary land at Fataloa, Salelologa, is used to discuss the confusion and the consequences on families and villages. The *pulefa'amau* (registration of individually authority over customary land) is still a confusing concept in the Land and Titles Court. Samoans are confused about its status in accordance with custom and usage. The case study of the land called Fataloa reflects this confusion.

The concluding chapter summaries and provides recommendation in order to meet the longstanding vision of the Land and Titles Court to provide impartial and fair judgment on all matters pertaining to customary land and *matai* titles for the well being of the Samoan community. The Court's decision plays a major role influencing *fa'a-Samoa* way of life. What is understood as *aganu'u ma agaifanua* (customs and usages) are not written or codified in the Land and Titles Court. The resulting variety of interpretations by the Court on each family and village custom and usages often creates more tension. To relieve some of these tensions the vague understanding of custom and usage as adopted by the Court requires re-examination.

List of Abbreviations

ALC	Administration of Land and Titles Court
CCCS	Congregational Christian Church in Samoa
EFKS	Ekalesia Fa'apopotoga Kerisiano i Samoa
HRPP	Human Rights Protection Party
LC	Land Court
LDA	Latter Day Saints
LTC	Land and Titles Court
LTA	Land and Titles Act
NRM	New Religious Movement
RCC	Roman Catholic Church
SDA	Seventh Days Adventists

Contents

O TIAFAU O LE MALAE O LE FA'AUTUGATAGIA A SAMOA.....	
DECLARATION OF ORIGINALITY	
UPU TOMUA.....	i
DEDICATION.....	ii
ACKNOWLEDGMENT	iii
ABSTRACT	v
PREFACE AND SUMMARY OF CHAPTERS	vi
LIST OF ABBREVIATIONS.....	ix
CONTENTS	x
GLOSSARY OF SAMOAN TERMS.....	xvi
MAP OF SAMOA	xxvi
CHAPTER 1	1
Introduction.....	1
Problem and Cultural Context.....	3
Enforcing Village Council Decisions.....	4
Problem Statement	10
Purpose of the Study	10
Methodology & Interview Process.....	10
Selection of Case Studies	11
Questionnaires and Selection of Participants	12
Participation and Observation	13
Assumptions.....	13

CHAPTER 2	14
Literature Review and Methodology	14
Literature Review	14
Differences between an Adversarial System and an Inquisitorial System	15
Samoan Judges' Decisions.....	16
Impact of the Land & Titles Court's Decisions.....	16
Customary land and family title.....	16
CHAPTER 3	23
The Land and Titles Court Act	
Constitution.....	23
The Land and Titles Court Constitution and the Land and Titles Act 198.....	26
1 Matai titles.....	26
2. Customary Lands	26
Matter of Procedures.....	26
Customary land & Pulefa'amau.....	28
Leasing.....	29
The Procedures and Petitions	29
Samoan Judges & Assessors	30
The Reality in the Court Decisions	32
Table 1: Reasons for Adjournment 1994 - 1999	33
The Court's Performance	34
Table 2: Decision Given and Adjourned, 1994 –1999	34
Table 3: Petitions with Decision Given and Adjourned Petitions, 1994 – 2001	35
Graph 1: Petitions with Decision Given and Petitions Adjourned 1994 - 1999	35
Table 4: Decision Given and Adjourned, 2000 – 2001	36
Table 5: Decision Given and Petitions Adjourned, 2000 - 2001	36
Court of Appeal.....	37
Table 6: Backlog of Appeal Cases at Court of Appeal, 1994 - 1999	38
Table 7: Backlog of Appeal Cases at Court of Appeal, 2000 -2001	38
The Act and Its Consequences on the Court's Performance	39

CHAPTER 4	41
Conflict over Religious Freedom.....	41
Fundamental Rights in the Constitution.....	41
Village Orientation.....	43
Case Study 1: Religious Freedom at Saipipi, Savaii.....	45
Views of the Village Council on the Constitution.....	46
Court of Appeal.....	47
Case Study 2: Religious Freedom at Falealupo, Savaii.....	49
View of the Court.....	51
Impact	53
Analysis.....	53
CHAPTER 5	58
Domestic dispute in saleilua, banishment by village council and role of the court	58
Background.....	59
Cause of the Dispute	59
Basis of village council decisions	61
At the Courthouse	62
The Land and Titles Court Decision	62
Analysis.....	63
CHAPTER 6	66
Disputed pule of Toelupe title in Malie	66
Background of Malie.....	67
The Salutation (fa'alupega) of Malie.....	68
Brief Genealogy connecting Malietoa Tanumafili II to Malietoa T. Vainu'upo	68
The Dispute between Malietoa Tanumafili II and Toelupe Vaito'a	69
Toelupe Vaito'a Appeal.....	73
Leafa Vitale.....	74

CHAPTER 7	77
Dispute over Pule of Land	77
Historical background	79
The Nature of the Dispute – Land	80
The Court Hearing	81
Genealogy given by Fulu Vaea Ioane	82
Confirmation of Fulu’s <i>pule</i> over the parcel of land	82
Genealogy given by Tuala Patolo Talipope III	83
Vaifale Patolo bestowed with Title Tuala	83
Grounds of the Land and Titles Investigation	84
The Court of Appeal	85
Reconsidering the Court’s Decision.....	86
Impact of the Court of Appeal’s Decision.....	86
CHAPTER 8	88
Pulefa’amau: Conflict between the Act and the Practice.....	88
Background.....	89
Salelologa.....	92
Nature of Dispute at Fataloa	92
Case Study 1: Pulefa'amau by Leuamuli Fa'avae at Fataloa	93
Case Study 2: Pulefa'amau by Taotua Fulisia at Fataloa.....	94
Summary of Confusion over Pulefa'amau.....	97
CHAPTER 9	101
Conclusion	101
Relating to the Land and Titles Act 1981.....	101
Bibliography	108
Government Publications	113
Department of Land and Titles Court	114
Tuasivi Registry (Savai’i)	115

Newspapers.....	115
Appendix A.....	116
QUESTIONNAIRE SHEET.....	116
Appendix A.1: In Samoan Version.....	116
Appendix A.2: In English version.....	121
Appendix B.....	127
STRUCTURE OF THE SAMOAN COURTS.....	127
Appendix B 1: The Structure of the Samoan Courts.....	127
Appendix B 2: Relationship of different Sources of Law in Samoa.....	128
Appendix B 3: Duty of the Registrar over petition lodged at the court.....	128
Appendix B 4: Duty of the Registrar.....	129
Appendix B 5: Objection over customary land in doubt.....	129
Appendix B 6: Jurisdiction of the Land and Titles Court (LTC).....	130
Appendix B 7: In the Land and Titles Court Sitting.....	130
Appendix B 8: Major reasons of adjourned cases.....	131
Appendix B 9: Court of Appeal.....	133
Appendix B 10: The Rules of the Court.....	135
Appendix C.....	136
RELIGIOUS FREEDOM.....	136
Appendix C 1: Bible class at Saipipi, Savai'i.....	136
Appendix C 2: Court of Appeal decision (LTC), ALC 5103, ALC 5103P1, 3 rd May 1996.....	136
Appendix C 3: Bible Class at Falealupo.....	137
Appendix C 4: Land and Title Court Decision at Falealupo.....	137
Appendix C 5: Court of Appeal.....	137
Appendix C 6: Supreme Court Decision.....	138
Appendix D.....	140
BANISHMENT OF A <i>MATAI</i> AND HIS FAMILY FROM SALEILUA VILLAGE.....	140
Appendix D 1: Fanene Anitelea and his sisters's petition.....	140

Appendix D 2: Ali'i and Faipule of Saleilua petition.....	140
Appendix D 3: Court decision on the eviction of a matai and his sisters from Saleilua	141
Appendix E	142
DISPUTE OVER THE <i>PULE</i> OF THE TOELUPE TITLE OF MALIE VILLAGE	142
Appendix E 1: Toelupe Vaitoa's prayers or talosaga.....	142
Appendix E 2: Malietoa Tanumafili II's Prayer against Toelupe Vaito'a.....	142
Appendix E 3: Petition by <i>Ali'i and Faipule</i> of Malie	143
Appendix E 4: Toelupe Vaito'a's written submission	143
Appendix E 5: Malietoa Tanumafili II's written submission.....	145
Appendix E 6: <i>Ali'i and Faipule's</i> written submission	147
Appendix E 7: Land and Titles Court's Decision (LTC)	148
Appendix E 8: The Court of Appeal's Decision	148
Appendix E 9: Malietoa title is the <i>pule fa'amahumu</i> in Malie	149
Appendix F	150
DISPUTED <i>PULE</i> OVER THE 10 <i>Gafa</i> OF LAND	150
AT LEAUVVA'A VILLAGE	150
Appendix F 1: Tuala Patolo Talipope III's petition against Fulu Vaea Ioane.....	150
Appendix F 2: Fulu Vaea Ioane's petition against Tuala Patolo Talipope III.....	150
Appendix F 3: Court Decision over the 10 <i>gafa</i> or 10 fathoms at Leauva'a, Upolu.....	151
Appendix F 4: Further clarification of the house in dispute.....	152
Appendix G.....	153
REGISTRATION OF <i>PULEFA'AMAU</i> AT FATALOA, SALELOLOGA	153
Appendix G 1: Public Notification of the <i>pulefa'amau</i> at <i>Fataloa</i> at Salelologa, Savai'i in the <i>Savali</i> . 153	
Appendix G 2: Public notification of the <i>Pulefaamau</i> over parcel of land Fataloa at	153
Appendix G 3: Registrar's Interim Order	154
Appendix G 4: Public notification of the <i>Pulefa'amau</i> of land Fataloa, Salelologa in the <i>Savali</i>	154
Appendix G 5: Public notification of the <i>pulefa'amau</i> of land Fataloa, Salelologa, in the <i>Savali</i>	154
Appendix G 6: Fa'aiuga a le Faamasinoga i le Pulefa'amau i se vaega o Fataloa, Salelologa	155
Appendix G 7: The Court's Decision: Registration over land	155

Glossary of Samoan Terms

<i>aia tatau</i>	Fundamental or human rights
<i>aua le a'aitui</i>	do not kick back/disobey or reject the will/decision of the village council even though the decision might be wrong.
<i>a'a o le tagata</i>	a person's connection through genealogy or lineages
<i>alia</i>	double canoe commonly used by Pacific Islanders during voyages in the past
<i>aiga</i>	descent family or descent group/household or community
<i>aitu</i>	Spirit or ghost
<i>aualuma</i>	group of daughters of <i>matai</i> (chiefs & orators) in the traditional socio-political structure of Samoa
<i>augatama</i>	forefathers
<i>auganofo</i>	appointment of titleholders to the family title
<i>afu le tautua</i>	long and well known service
<i>aiga potopoto</i>	extended family including foreign husbands and foreign wives
<i>aganu'u</i>	universal/national culture or custom
<i>ali'i/ali'i sili</i>	titular or paramount chief
<i>Ali'i ma Faipule</i>	village council or the council of chiefs and orators
<i>alofa</i>	Love/ Also means village offering or monetary contribution for the care of pastor

<i>amio le pulea</i>	disrespectful manner or behaviour
<i>asiasiga fa'alenu'u</i>	village visitation or village inspection
<i>ati ma le lau/oto ma le lau</i>	Samoa traditional form of punishment which is the uprooting of family source of livelihood/uprooting of family crops
<i>agaifanua</i>	local usage in the village or a village lifeway
<i>Aoga fa'a Tusi Paia</i>	Bible class or Bible school
<i>Ava</i>	a ceremonial drink from the roots of Pfefferstrauch Piper methysticum
<i>E tele a'a o le tagata i lo'o a'a o le laau</i>	a person has more roots than the roots of a tree
<i>eseese pulega</i>	different way of local governance.
<i>e toe sau malama</i>	good thoughts will be brought forth in the next day/tomorrow is another day
<i>e le'o fai nu'u</i>	not taking part in village obligations or local governance
<i>e le moemoenoa le ti'apolo</i>	evil feeling stirred every time
<i>e le talafeagai/e le fetau</i>	invalid, null or void or do not match or equate
<i>e le po pea se nu'u</i>	a village is not in darkness for long or village council anger towards the accuser/s will never remain forever
<i>ia fai ni ai o le finagalo o le nu'u</i>	To obey and accept the village council punishment or tolerate their decision whether right or wrong
<i>ifoga</i>	A public apology or an act of reconciliation, also known as a ritual of self-abasement

<i>igagato</i>	a title or customary land given to someone as a gift from the recognized holder of the title or owner land due to his or her enormous services to the family
<i>itumalo</i>	district/s or cluster of villages confined under political divisions of Samoa
<i>itu tagi</i>	petitioning party in the Land and Titles Court
<i>itu tete'e</i>	responding party in the Land and Titles Court
<i>O le fa'avae o Samoa</i>	Constitution of Samoa
<i>uluola le aiga</i>	grown in numerous lineages/growing family
<i>fa'aa'e ma le nu'u</i>	reinstatement to the village after serving a village punishment e.g. eviction
<i>fa'aletonu</i>	uncertainty
<i>fa'alupega</i>	set of formal greetings of a community in traditional ceremonies. Also known as honorifics or village salutation
<i>fa'amasino Samoa</i>	Samoan judge of the Land and Titles Court
<i>fa'asinomaga</i>	reference of identity or sense of belonging
<i>fa'a Samoa</i>	Samoan way of life
<i>fa'ate'a ma le nu'u</i>	removed or suspended from the village
<i>fa'atonu</i>	Samoan assessor of the Land and Titles Court
<i>faiifeau Samoa</i>	Samoan pastor
<i>fa'aipoipoga</i>	wedding

<i>fa'aiuga, fa'amasinoga o Famua ma Suafa</i>	Land and Titles Court decisions
<i>fa'aituau</i>	nepotism/act of favouritism
<i>fa'aleaogaina</i>	dismissal or disqualification
<i>fa'alavelave</i>	objection or petition file in the court, also refer to family obligations/affairs e.g. wedding or funeral, building of guesthouse or bestowal of a <i>matai</i> title
<i>fa'asala/fa'asalaga</i>	being punished or punishment
<i>fa'asalalauga</i>	public notification or public notice
<i>fa'amaonia</i>	confirmation or approval
<i>fa'amanatuga</i>	holy communion/in memory of
<i>fa'amatalaga tu'u fofoga</i>	verbal statement or testimonies
<i>fa'amasinoga</i>	court/court case
<i>fa'atagaga</i>	permission
<i>fa'amasinoga o Apili</i>	Court of Appeal
<i>fa'asiliaupule</i>	stubborn or arrogance, resistances
<i>fa'alelei</i>	to improve or upgrade
<i>fa'aleleiga</i>	reconciliation
<i>fa'amamuiaga</i>	blessing
<i>fa'amatai</i>	chiefly system
<i>fa'apaia</i>	to ordain/ to make sacred or dedicate
<i>fa'apogai</i>	the initiator of a title installation
<i>fa'asinosino lima</i>	pointing fingers
<i>fa'atulaiese</i>	removal or eviction from the village

<i>fa'avae</i>	foundation
<i>fafa o sauali'i</i>	gateway of gods' spirits refer to Falealupo
<i>fanau</i>	children sometimes refer to give birth
<i>fanua</i>	land sometimes refer to the womb or placenta (birthing place) of a mother
<i>fanua fa'a-le-aganu'u</i>	customary land
<i>fanua umia sa'oloto</i>	freehold land
<i>fanua ma lona tapuafanua</i>	customary land and its taboo
<i>faiava</i>	a husband living in his wife's village
<i>fetalaiga</i>	formal speech from orator
<i>finagalo fa'atamaali'i</i>	chiefly consensus or consent
<i>faletalimalo</i>	extended family guest house or large visitors house
<i>faletua</i>	wife of an alii
<i>faleo'o</i>	Samoan hut made up of woods and thatches (made of sugarcane & palm leaves)
<i>fono tatalo</i>	prayer meeting
<i>fuafuaga</i>	plan or proposal
<i>foaifale/fuaifale</i>	sub branch of a family lineage
<i>finauga i le va o le tama ma le atali'i</i>	disputes between the father and the son
<i>gafa</i>	genealogy
<i>laau</i>	trees
<i>le ua sala po ua fa'asala</i>	wrongdoers or law breakers or penalized person

<i>leai se vafealoaloa'i</i>	no respect/ill manner
<i>lotu</i>	church
<i>lotu afiafi</i>	evening service
<i>lotu o le fa'aleleiga</i>	reconciliation service
<i>lotu Kerisiano</i>	Christian church
<i>lumafale</i>	front of the residential site of the family land or front yard
<i>ma'a</i>	stone/s or rocks
<i>Malietao e fa'alogo ia te oe Samoa</i>	Malietao, Samoa listens to you
<i>malelega</i>	formal declaration
<i>maliliega</i>	an agreement
<i>Malo o Samoa</i>	Government of Samoa
<i>matai</i>	family titleholder
<i>matai palota</i>	term referring to the titles bestowed specifically for election/voting purposes
<i>matua/mātua</i>	the eldest/parents
<i>maota tauave</i>	traditional residential site from the main village recognised and officilly used in the new resettlement community e.g. Leauva'a and Salamumu village
<i>mafua (verb)/mafuaaga (noun)</i>	originate (verb) origin (noun)
<i>mamalu</i>	dignity
<i>mavaega</i>	dying or death wish or solemn declaration
<i>measina</i>	treasures
<i>molimau tauto</i>	witness or sworn evidence
<i>muamua i mea uma</i>	come first before anything

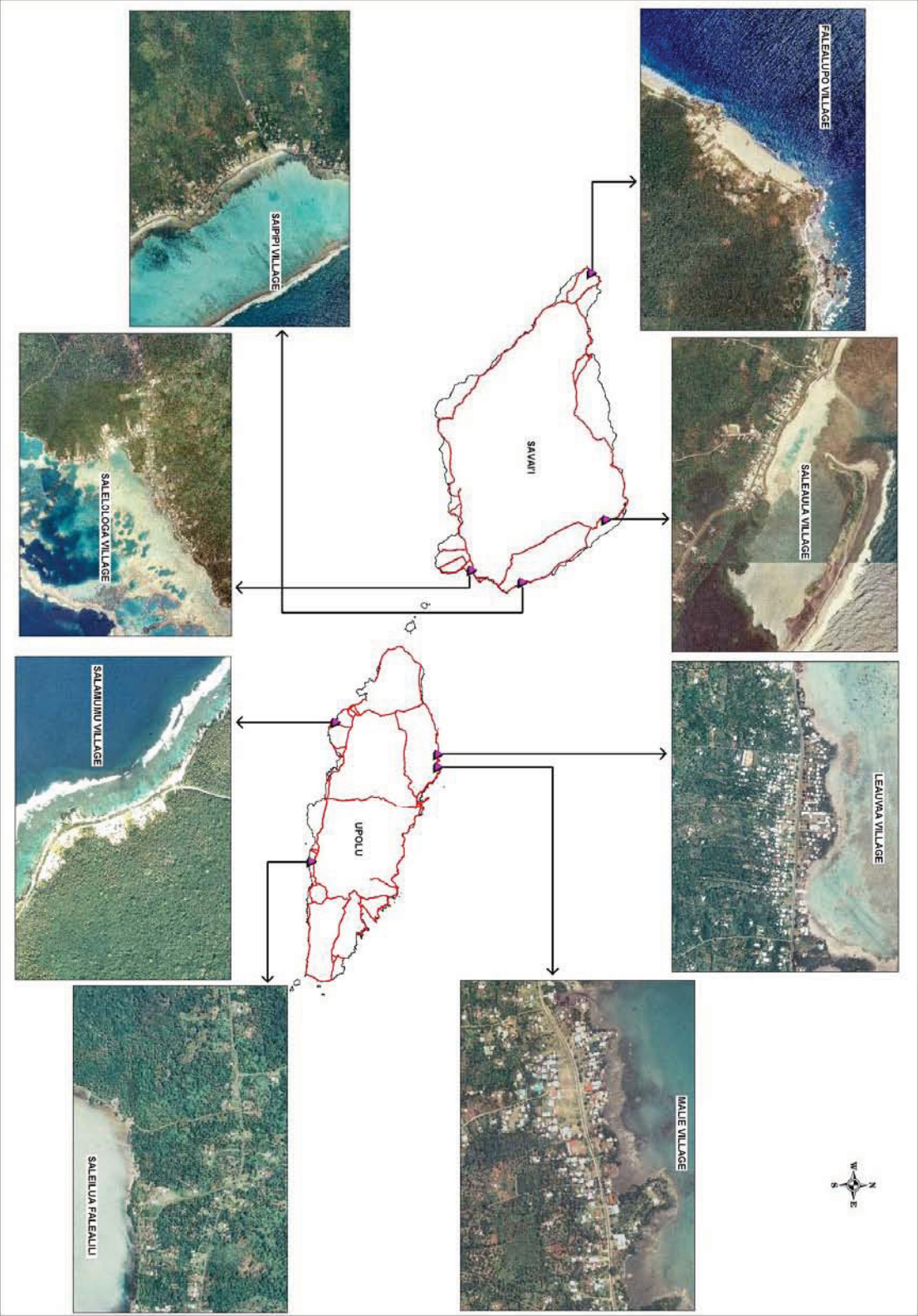
<i>mu le foaga</i>	burning or destruction of family properties/finality
<i>nofotane</i>	a wife living in her husband village
<i>nu'u</i>	village or polity
<i>pāpā/papa</i>	sacred or paramount chief. Also refer to the rock
<i>pule</i>	authority or power
<i>puleaga a Ali'i ma Faipule</i>	protective authority or local governance of the village council
<i>pulenu'u</i>	village mayor or a government representative in the village, appointed by the village council and he/she must have a <i>matai</i> title
<i>pule fa'amalumalu</i>	overriding or umbrella authority
<i>pule fa'avae</i>	foundation/original or constitutive authority
<i>pulefa'amau</i>	registration of individual or collective authority over land
<i>pesepesega</i>	singing or song of praise
<i>poloaiiga le tumau</i>	Land and Titles Court Interim Orders; Section 49 and 50 of the Land and Titles Act 1981
<i>pitonu'u</i>	sub-village
<i>saofa'i</i>	the ceremony of bestowal of a <i>matai</i> title or title installation
<i>sa'o o le aiga</i>	titular or principal chief of the descent group
<i>saofaiga a matai</i>	<i>matai</i> traditional or socio-political

	structure of the <i>matai</i> system
<i>soloa ma le aufuefue</i>	no connection or attachment to any village obligations/total banishment
<i>suafa matai</i>	title name/s
<i>Samoa o le atumu'u tofi</i>	Samoa is politically appointed to rule by <i>matai</i> or Samoa hierarchy has been established
<i>Savali</i>	Government newspaper or Government bulletin
<i>suli ma feoi</i>	family heirs
<i>suli o le vaegatama</i>	a person adopted from/within the family/family descendants
<i>ta'auso</i>	family descendants
<i>tamaaiga</i>	son of many families referred to titles Malietoa, Mataafa, Tupua Tamasese and Tuimalealiifano
<i>tamatane</i>	male descendant or agnatic descent line
<i>tamafafine</i>	female descent line
<i>tapaaui</i>	sacred or paramount chief
<i>tapuaiga</i>	village supporters, sometimes also means worship
<i>tapu</i>	taboo
<i>tapuafanua</i>	The land and its taboo
<i>tala tusia</i>	written statement or written submission in the Land and Titles Court
<i>talosaga</i>	petition/prayer in the Land and Titles Court
<i>tagata o le eleele</i> <i>tapuaiga lotu</i>	people of the land religion or denomination

<i>taule'ale'a/taulele'a</i>	organization of untitled men or non <i>matai</i> in the village/always refer to sons of chiefs and orators
<i>taumasina</i>	unpredicted or unforeseen circumstances
<i>tautua</i>	render services to the family <i>matai</i> , family, village and the church
<i>tautuaupega</i>	too late
<i>tausi</i>	wife of an orator
<i>toala fanau</i>	literally refers to placenta but refers to the land as the birthplace of every creation in Samoa
<i>tofa mamao</i>	wise counsel
<i>tulafale</i>	orator or talking chief
<i>tulafono fa'apapalagi</i>	western law
<i>tu le to'oto'o</i>	the village <i>fono</i> decision is conveyed by a group of <i>matai</i> and untitled men as spokesperson on behalf of the village council. It must be obeyed before the village council slash and burn their homes and properties
<i>tuaoi</i>	boundary or barrier
<i>tuasivi o le mauga</i>	mountain tops or mountain ridges
<i>tuagane</i>	sister's brother
<i>tuafafine</i>	brother's sister
<i>tupulaga e le'i fananau mai</i>	unborn generation
<i>tupulaga o lumana'i</i> <i>tulaga maota</i>	future generation chief traditional residential site

<i>tulaga laoa</i>	orator traditional residential site
<i>tulafono</i>	law
<i>tulafono a le nu'u</i>	village regulations or village rules/laws
<i>tutusa tupulaga</i>	same generation
<i>tuaa</i>	parents
<i>tuua o le nu'u</i>	senior <i>matai</i> of the village
<i>va</i>	literally means space
<i>va-tapuia/vapaia</i>	mutual or sacred relationship or to place something under restriction
<i>va-fa'atamaali'i</i>	chiefly relationship
<i>va'ava'alua le fa'a-Kerisiano ma le aganu'u</i>	Culture and Christianity work together
<i>vavao a le nu'u</i>	village curfew
<i>vevesi fa'alotoifale</i>	internal or domestic dispute.

Map 1: Samoa Islands – identify villages with case studies



CHAPTER 1

Introduction

Samoa's ability to develop its own political institutions in the last quarter of the 19th century was greatly influenced by the intense regional rivalry between Germany, United States of America and Great Britain. The 1873 constitution established a bicameral parliament of *Taimua* and *Faipule* with membership restricted to family titleholders or *matai*. One of the principle aims of the constitution contributions was to resolve the complex claim of foreigners over Samoan land. Pressured by commercial interests, diplomats and development from its neighbouring countries such as Tonga and Fiji to establish a centralized government, Samoa developed 'a fractious monarchial system, rotated between the country's two highest lineages (Sa Malietoa and Sa Tupua) for four years term'.¹ Rivalry between individual *Tama-a-aiga* titleholders and their supporters for national supremacy ushered in greater number of foreigners and with it the need for some form of authority to regularize their movement and settlement. The authority came in the form of a tripartite condominium under the three powers. Germany, United States of America and the Great Britain in 1889. Samoa became German colony in 1900 until 1914 while the whole Eastern Samoa comprising Tutuila and the Manu'a group fell under American control.

From 1900 to 1914, Governor Wilhelm Solf pursued a policy of restricting foreign land purchases and native employment on the plantation in Western Samoa that kept the customary village based system more or less intact. *Tama-a-aiga* title-holders were appointed as advisors and the *Faipule* were retained in a consultative capacity. Samoa precontact hierarchical system had comprised of distinct *ali'i* (chiefs) and *tulafale* (talking chiefs's or orators), but this difference was gradually displaced in favour of the generic term *matai*, reflecting a 'levelling' or 'secularization' of customary titles.²

Solf in 1903 established the *Die Land Kommission/ Die Kommission des Landes* (Land Commission) today known as the Land and Titles Courts for the specific purpose of helping the Samoans to settle disputes over their family titles and land in accordance with customary

¹ So'o 2005:2

² Ibid p: 2

principles. The establishment of the Land and Titles Court was a unique colonial contribution to weakening *fa'a-Samoa* or traditional way of life. This method of settling disputes was retained when Samoa re-gained independence in 1962.

Samoa inherited a constitution, which embraced a dual system of authority.

One system is based on *tulafono fa'apapalagi* or universal human rights and the other is based on *aganu'u ma agaifanua fa'a Samoa* or custom and usage.³

The Department of Land and Titles Court is administered under the Ministry of Justice and is currently situated at Mulinu'u peninsula on the island of Upolu. It also has an Office at the Government Station in Tuasivi on the big island of Savai'i. The Mulinu'u peninsula became a political and historical landmark in the 19th and early 20th century and the seat of the modern government or *Malo o Samoa*. Mulinu'u is also known as *Ti'afau o le malae o le fa'autugatagi a Samoa*; literally a place of refuge a sacred meeting ground and perceived by Samoans as a place where solutions to problems are sought – in this case problems over land and titles. Tiafau is the location of both the Land and Titles Court and Parliament. The parliament or the Legislative Assembly is perceived as the site of the *tulafono fa'apapalagi* or western law and the Land and Titles Court is the site of the *aganu'u ma agaifanua* or custom and usages, the major forms of rule to resolve disputes over family titles and land. As Meleisea observes that 'when individuals, *aiga* (descent groups), *nu'u* (village), *itumalo* (districts) and the national government take disputes to court, they may invoke either of these sources of authority to legitimize their action and claims'.⁴

Nevertheless, both institutions face constant changes due to religious, social, economical and political influences. These constant changes can confuse many Samoans with the operation of the court. At Independence, Samoan leaders had hoped that by blending cultural tradition and rational legal form of political authority would merge the best of 'custom and usage' and contemporary liberal principles for a peaceful Samoan society. However, within this dual

³ Tuimaleali'ifano 1997:vii

⁴ Meleisea 1987b:xi

system of governance, the confusion is perhaps unsurprising and poses a major threat to a peaceful and democratic society.

Unasa notes that

In pre and post independence Samoa political leaders had thought that national independence would solve the country's internal problems, they were greatly mistaken. The political aims and ambitions held by village leaders and the central government frequently clash as events since 1962.⁵

So'o observes that 'both the indigenous political system and introduced democratic system of Western Samoa have certain practical values and ideals associated with them, which appear to be in conflict'.⁶ Furthermore, Meleisea argues, that 'the problem is particularly severe for the Land and Titles Court, a body legally constituted to deal with matters of traditional significance'.⁷

Problem and Cultural Context

The majority of Samoans live under two systems of law – constitutional democracy and custom. While the constitution is the supreme law, the law also recognizes the role of village councils in the maintenance of law and order particularly at the local level. Samoans live in 330 villages under the jurisdiction of the village council and since the village council is the recognized lawmaker at the local level, it is in the best interest of the government institutions such as the court to cooperate with the village council through mutual mediation. This is because the village can traditionally enforce its own decisions. While the court makes decisions affecting villages, it cannot enforce its decisions upon villages without cooperation by the village council. This is reflected in the local saying *e malu le tulafono i pulega a Alii ma Faipule* – the rule of law is protected by village council, *e faapena foi ona malu pulega a Ali'i ma Faipule i le tulafono* – and in the same manner, the village council decisions gain respect through the judiciary system. The government acknowledges its dependence on local

⁵ Unasa 2000:156.

⁶ So'o 1996:12.

⁷ Meleisea 1987a: xi.

village councils recognizing that it does not have the resources to police the country and enforce its decisions.

Enforcing Village Council Decisions

In the village council, *matai* manages law and order in the village. Punishment by banishment as meted out by village councils was ostensibly for maintaining peace and harmony. In the 1960s, banishment was used against a person or group of people who wanted to exercise their right for religious freedom by establishing a new church. Some village councils prefer converts of new churches not to set up a church in the village but to go to churches in other villages. Yet other village councils forbid villagers from attending new churches outside the village.

Village Laws control life in the village and such regulations are passed by each village council. They make decisions on matters pertaining to the welfare of the village and direct the use of the land under their collective authority - *pule fa'amalumu*. Offenders are punished and punishments may range from fines such as fine mats and pigs. Serious offences may result in *mu le foaga* (burning of properties), *ati ma le lau* (uprooting of crops), and *faate'a ma le nu'u* (wholesale) eviction of the family. The belief is that without the *matai* system, Samoan community would run into difficulties. Every village and even the police force rely on the village council as a law enforcement agency. Galuvao Tanielu (former Police Commissioner and Samoan Judge in 2003) lamented that 'there are advantages and disadvantages with the village council, but the police job would never function properly without the *matai* system. Samoa has only three (3) police stations in rural area outposts in Upolu and two (2) outposts in Savai'i.

In fact, the village councils or village parliament is not a part of the law enforcement agency of the Court *per se*. However, the village council is regarded as the vital adjudicators and most effective informal courts in maintaining peace, law and order at the village level. Aiavao (1993: 3) further stated that;

...where there are offences the matter is often handled within the village before it reaches police, traditional punishment is then used as mitigation in court.’

To this extent, village council is recognized as a decision-making body that assists in any decisions of the Land and Titles Court. The council’s status has been enhanced by the Village *Fono* Act 1990 and its decision, except in cases of manslaughter and murders are normally recognized by the court and its law enforcement agencies. The question is, why is the Village *Fono* Act enforcing the village council banishment of villagers who commit misconduct in the village? Was it implemented to assist the Land and Titles Court decision on matters such as freedom of religion and movement in the village or for political reasons? The writer’s point of view is that a controversy in 1990 granting legal power to the village council and the legislation was tabled by the Human Rights Protection Party (HRPP) before the general election of 1991. Tofilau Eti (former Prime Minister) was blamed for this legislation when a man was killed at Lona Fagaloa, when the deceased went against the village council’s decision. The researcher view on the issue that the intention of the legislation (Village *Fono* Act) was to pacify the village council when universal suffrage was approved and introduced in the voting system where previously only *matai* could vote. The only alternative to the affected person who is punished by the village council is to appeal the council’s decision to the Land and Titles Court. In section 11 (1) of the Village *Fono* Act 1990 the right to appeal the decision of the village council is defined. According to Tcherkezoff (2000: 119)

...the 1990 electoral changes were accompanied by the legal reinforcement of the powers of the village *fono*. Thus, the Village *Fono* Act has provided village councils with greater legal powers and quasi autonomy in certain areas.

Additionally, the churches play a vital role with village councils in maintaining law and order. Increasingly, before enforcing their decisions, village councils are taking their decisions to the court for confirmation. The role of the *fa’amasino ma fa’atonu Samoa* (Samoan judges and Assessors) as decision makers are thus important. Their decisions have significant impact on families, villages and districts. Specific questions to be examined include the consistency (or lack of consistency) of their decisions and consequences thereof. Much of what has been

written on land, land use and family titles (*matai*) reflect accounts of family struggles over *matai* titles and land appurtenant to those titles.

Family titles and attendant land are sensitive and inter-connected issues that lie at the heart of village and district governance. They are also the cause of many broken families and splinters within villages and districts. Family titles and land are emotional issues because it involves *tala fa'asolopito* (history), *fa'alupega* (honorific familial/set of ceremonial greetings) and *gafa* (genealogy). From genealogy, family history and *fa'alupega* emphasizes the uniqueness of the *aiga* and its relationship with other *aiga* and the environment is not easy to define because it can mean father, mother, their children and all those who live together with them, foreign husbands and wives, father mother their parents and grandparents. Family sizes range and large numbers are encouraged for economic and political reasons.

Land and family titles symbolically, socially and spiritually are ingrained within the Samoan *fa'asinomaga* (identity and sense of belonging or point of references). Apart from the socially constructed aspect of the Samoan identity such as language and culture, land is intricately connected to Samoan identity and culture. To a considerable extent, *matai* titles and customary land are inseparable and are issues that lie at the heart of *aiga* (family), *nu'u* (village) and *itumalo* (district organizations). This is because traditionally, customary land is considered as *to'ala fanau* (womb/placenta). This means it is the root or birthplace of every creation on Samoan society. It provides a sense of identity and rootedness to people. As a former Prime Minister at the opening of the Land and Titles Court in Tuasivi (1970) Savai'i said,

...the decision of the Criminal Courts will affect only those accused whereas the decisions of the Land and Titles Court have a far reaching effect for they are binding even on the unborn generation.⁸

Samoa is not the first or only country to have problems with its court system. Conflict between customary law and modern law is evident in almost all judicial systems. As Powles asserts that 'Courts in the Pacific today are a mixture of old and new. Rules and techniques for settling disputes, for preserving authority and status for protecting property and generally for

⁸Tupua Tamasese Lealofi IV cited in Epati, 1988:167.

maintaining social order have been in existence in one form or another as long as men and women have lived in communities.’⁹ Written laws and formal courts were introduced in the Pacific during the mission and subsequent colonial period in early 19th century.

In every Pacific country, law and justice have been influenced by introduced principles and practices, but in every country aspects of the traditional order remain – in some cases very strongly...many people assumed that the traditional elements would soon be totally replaced, but it has not been so, nor is it likely to be. Each Pacific country is developing a unique amalgam of local and foreign precedents in creating its own system of justice.¹⁰

Over the last two decades, the number of disputes has increased and created an enormous challenge for the Ministry of Justice because of the huge backlog of pending cases. Prior to colonization all land was held according to customary tenure but in contemporary Samoa, land is now divided into three main categories: customary land; freehold land and public or government land. Approximately eighty-one percent (81%) of the land is held under customary tenure while about sixteen percent (16%) is held by the Government or state land and "European" or freehold land is four percent (4%).¹¹

The freehold tenure of ownership dates back to the 19th century when number of European purchased good arable land from Samoans for coconut and cocoa plantations. The introduction of western “capitalism” increased the importance of land through the network of “cash economy”. Samoans entered this web through the sale of land to Europeans,¹² sale of produce to passing ships.¹³ The alienation of customary land began in the mid 19th century as European settlers including missionaries sought residential and agricultural land.¹⁴

Apia became the centre of the Hamburg Trading Firm of J.C Godeffroy and Son. It was a main port for collecting coconut oil and copra from other islands for shipment to Germany. The sales of land rapidly grew in 1860 when Germany expanded its commercial activities in

⁹ Powles 1988:6.

¹⁰ Ibid p. xii.

¹¹ O’Meara 1987: 91

¹² Crocombe 1997: 17

¹³ Cole 1986:1.

¹⁴ Ward and Ashcroft 1998:64.

the Pacific and Europeans sought land on which to grow cotton. These sales were stopped in 1889 when the final Act of Berlin Conference on Samoan affairs prohibited any further alienation of land.¹⁵

Fundamental rights of every citizen of Samoa are protected by the Constitution, the supreme law of the land; however the Court has ‘indicated that such rights are not absolute for they are subject to national security, public order, health or morals within society’.¹⁶ The issue is not who is wrong at this stage, but the context within which the law operates.

Kamu noted that as a *matai* a person upholds the good name of the family. Some of his duties are to distribute the family land for the use of its members, coordinate both within and outside the family.¹⁷ One of the aims of this research is to question why many court decisions are appealed and why the Court of Appeal takes so long to settle disputes. The delays prolong disharmony within the *aiga potopoto* (extended family) and results in large areas of *fanua fa’a-le-aganu’u* (customary land) and other family capital infrastructures remaining stagnant and unproductive. The disputes often spill over to the village community. The disputes have significant implications on the livelihood and wellbeing of everyone.

Many land disputes between *aiga* (families), *nu’u* (villages) and *itumalo* (districts) center around *tuaoi o fanua* (land boundaries). Generally, land disputes have arisen out of claims of *pule* (authority) over land boundaries; disputes between plantation owners; boundary disputes between villagers and district rights to use cultivated land, leases, *pulefa’amau* (registration of ones’ authority over family title and customary land) and land assigned for church purposes. Other customary disputes are related to the removal of a person or persons from family land, removing of people from villages.¹⁸ Some of the disputes concern pieces of *fanua umia sa’oloto* (freehold land), which lie within the village boundary. Owners of freehold property are made to feel that they are subject to rules governing village residents. For example, the construction of a house on freehold land is subjected to village rules governing the height and

¹⁵ Fox and Cumberland 1921:146

¹⁶ Annual Report 2000 – 2001:8.

¹⁷ Kamu 1996:42.

¹⁸ Vaai 1999:97.

size of houses in relation to the ranks of village titleholders. Other disputes relate to the introduction of new churches into villages in the face of a local policy restricting the number of church denominations. This is because many villages restrict the number of denominations on the basis of decisions made by their *augatama* (forefathers) sitting in council.

If a family chooses to form their own form of worship without consulting the village council, the council will evict them from their customary land (often from their freehold land). The protective/overriding authority of the village council has the force of law through the Village *Fono* Act 1990. Nayacakalou observed that,

...the village retained the right to levy fines for misdemeanors and crimes against the local society and, in punishment of severe offence, the right to destroy a man's house, kill pigs, cut down his breadfruit trees, and banish his entire family.¹⁹

The Council can enforce their decision through customary means such as banishment.²⁰ Approximately sixty percentages (67%) of Samoans live and work in villages and are subjected to village council authority. When conflict arises out of village council decisions, the preferred means of seeking redress is the Land and Titles Court. After a century of operation, almost everyone is familiar with the court's method of procedures, language, officials and decision making culture. As such, the role and decision making procedure of the Land and Titles Court constitutes an important laboratory for social scientists.

In Samoa, the terms for describing banishment are *mu le foaga, oto/ati ma le lau or soloa ma le aufuefue*, which simply means uprooting and burning of belongings. The role and decision making procedure of the Land and Titles Court on all matters which come under the governance of the village council becomes an important issue to explore. Using specific case studies, this research will examine the Land and Titles Court procedures, its jurisdiction and its decision.

¹⁹ Nayacakalou 1960:111.

²⁰ Extreme form include *mu le foaga, oto/ati ma le lau or soloa ma le aufuefue*, which means uprooting and burning of belongings.

Problem Statement

The objective of the court is to fairly, timely and reasonably adjudicate on all matters concerning customary land and titles to ensure peace, harmony and security within the Samoan society. To what extent is the Land and Titles Court fulfilling its objectives? Does it show consistency in its decision-making?

Purpose of the Study

The primary objective of this thesis is to evaluate the working of the Land and Titles Court according to its governing Act, the Land and Titles Act 1981 and particularly the application of custom and usage as defined by the Act on cases brought before the court. This means a critical examination of the relevant portion of the Act.

Methodology

The primary means of data collection was through a questionnaire, observation, interviews and archival research in the Department of Land and Titles Court and Justice Department. Primary and secondary sources are listed in the Bibliography.

The Interview Process

The researcher as a Samoan adopted and observed the *va-fealoaloai*, the latter denoting the most important manner of negotiation with *Ali'i ma Faipule* and family *matai* in villages. My long term residence as a villager gave me confidence and sharpened my interviewing skills for the study. Prior to interviewing, I sought consent from the family *matai*. As Smith points out that the term respect is consistently used by indigenous peoples to underscore the significance of our relationship and humanity. Through respect the place of everyone and everything in the universe is kept in harmony.²¹

Interviews were also conducted with government officials, male and female *matai* in the family or in the village and the public to identify the impact of the Land and Titles Court

²¹ Smith 1998:121.

decisions on Samoan Society. Interview was a very important method of gathering information particularly in the context of an oral culture. As there are various versions of oral traditions submitted to the Court as evidence, it was important to record the difference versions in order to attempt a reconciliation.

Faamasino and *Fa'atonu Samoa* were interviewed regarding the Court's deliberation and its decisions. The Registrar and staffs of the Land and Titles Court were also interviewed in order to present a better understanding of their primary functions in the Department.

Participants were selected on the basis of their experience as employees of the Land and Titles Court. The main topics covered in the interview were:

- Personal
- Culture and Samoa *matai* system and family *matai*
- Land Ownership
- Constitution of Samoa and Customary law and order
- Land and Titles Courts and Christianity in terms of religion

The topics for the interviews were based on the objectives of the study which were:

1. To better understand and evaluate the working of the Land and Titles Court and the impact of its judgments on Samoan society.
2. The extent to which the Land and Titles Court is fulfilling its objectives.
3. Where inconsistency is found in its decision-making, to identify the reasons for it.

The Selection of Case Studies

A case study approach was adopted to illustrate the major issues under investigation in this thesis in relation to the 1981 Act. The major issues were:

- the conflict of customary law and human rights over religious freedom at Sapipi and Falealupo, Savaii.

- the clash between the collective rights/authority of the village council and fundamental rights or individual rights enshrined in the Constitution of the Independent State of Samoa at Saleilua, Upolu.
- the conflict over the *pule fa'avae* (constitutive authority) between the paramount titleholder and senior orator chief; Malietoa Tanumafili II and Toelupe Vaito'a of Malie, Upolu.
- land dispute between the *sa'o* (titular) and his *tulafale* (orator) at Leauva'a.
- confusion and misinterpretation of the term *pulefa'amau* at Salelologa, Savaii.

Questionnaires and Selection of Participants

The questionnaire was written in Samoan.²² All respondents were interviewed in Samoan. The questionnaires were provided to some selected *matai* (male and female *matai*,) some selected *faletua ma tausi*, *aumaga* and *auluma* and some *tupulaga talavou* /youth of the village and *faiava* (foreign husbands) and *nofotane* (foreign wives) of some selected family. Approximately four percent (4%) of respondents were interviewed studying at secondary and tertiary schools in urban area. Ten percent (10%) of respondents were *matai*, women and *taulele'a* living in rural area. Six percent (6%) were school leavers including *faiava* and *nofotane* were also interviewed.

Approximately, 120 questionnaires were distributed to different status of the traditional structure of the Samoan society Sixty (60) questionnaires were distributed to *matai*, twenty (20) to *faletua ma tausi*, twenty (20) to untitled and ten (10) included *faiava* and *nofotane* (10) to young age group over 21 years of age. From hundred and twenty (120) questionnaires were provided, only ninety seven (97) responded. The 23 questionnaires that were not returned are from *faletua* and *tausi* and *faiava* and *nofo tane*. This is because they are outsiders and they have little knowledge or less saying of their wives and husbands' family genealogy. The responses reveal that most of the respondents refused to provide the answers for the questionnaires because of their inability to understand the Land and Titles jurisdiction as it applies to the customary laws in Samoa over customary land and titles. Their understanding is that customary law supercedes legislative law in Samoa. In fact, questionnaires that

²² See Appendix A for the Questionnaire sheet provided.

specifically focus on customs, myths, legends and oral traditions reflected the wisdom held by senior people (elders) of the family.

Participation and Observation

I had worked at the Land and Titles Court for seven years (7) as a Senior Research Officer and also served as a Court clerk during court hearing. In the court hearing my role as a court clerk was to read out each party's written statements, taking notes and observing each party's response to question posed by the Judges and Assessors. I had sat through hundreds of cases attended by hundreds of people. My other responsibility was to document the Judges and Assessors' deliberations during their consultation for the final decision of the court. In each court deliberation I participated as a secretary of Judges Panel and listened to their opinions and discussions.

Assumptions

The thesis argues that the decisions of the Land and Titles Court greatly impact the traditional social structure and values of Samoa. While these decisions may resolve conflicts in the short term, many remain unresolved causing unending disputes, appeals and backlog in the Land and Titles Court. These decisions also have widespread internal insecurity implication on development socially, politically and economically. In this contention that Samoa's longstanding developmental problems could be minimized by resolving the anomalies that currently exists in the Act and the way court officials are having to re-create customs to make up for the Act's deficiencies. Through case studies (see summary in the preface above), this research examines the impact of the Land and Titles Act 1981 as a governing instrument on the proceedings, jurisdiction and decision making process of the court. The cases draw attention to the anomalies between the clause in the Act regarding the determination of custom and usage and the way these are interpreted and re-interpreted by court officials in the absence of clear definitions and guidelines. Chapter 3 examines the Act as an important platform for examining the individual case studies on how the court functions in accordance to the Act. But first it is important to review the literature on the birth of the Land and Titles Court. This follows in Chapter 2.

CHAPTER 2

Literature Review and Methodology

Literature Review

The genesis of the Land and Titles Court is rooted in a Commission created by the German colonial Governor in 1903 to deal with disputes over customary land and family titles.²³ The incessant disputes, it could be argued that the loss of sovereignty contributed to increase in disputes. Once Germany took control, it was in the interest of the colonial government to bring these perpetual disputes under some control. The Commission functioned as tribunal and enabled the German Governor to intervene in major land and titles disputes. The commission comprised three (3) Europeans and fourteen (14) Samoan advisors. The function was

.... to adjudicate Samoan land and title disputes as referred to them by the Governor. No procedures were laid down for the Commission nor specific regulations, except those principles of law which were recognized throughout the German empire. The Commission's decision were to be handed to both parties in writing and note stating reasons for the decision was to be included in the case file. A register of all cases and decisions was to be kept by the Commission.²⁴

As Vaai observes that the:

The Land and Titles Commission was therefore conceived by the German Administration as an essential tool of political and administrative control that served the multi purposes of defusing Samoan customary disputes, promotion of administrative goals and more importantly maintained peace and order.²⁵

When World War 1 broke out, New Zealand Administration took over the administration of Samoa in 1914 and changed the Land and Titles Commission to a Native Land and Titles Commission which included Europeans and Samoans 'acting in an advisory capacity only.'²⁶ The name Native Land and Titles Commission was changed in 1937 to the Native Land and

²³ Tuimaleali'ifano 1997:13.

²⁴ Meleisea 1987b:65.

²⁵ Vaai 1999:102.

²⁶ Western Samoa, Land and Titles Court: 333.

Titles Court. The Samoan Land Protection Ordinance in 1934 replaced it and administered by the Land and Titles Act 1981.

Figure 1: Role and function of the Judge in the Land and Titles Court is different from the role of the Judge in the other branch of Courts in Samoa.

Differences between an Adversarial System and an Inquisitorial System

Adversarial System	Inquisitorial System
<ol style="list-style-type: none"> 1. Parties define the issues to be dealt with. 2. Parties are in control of what evidence to call. 3. Parties usually represented by a lawyer, present the evidence. 4. Parties, or their lawyers, test the other side's evidence. 5. The Judge is passive in that s/he does not test either party's evidence or questions witnesses. 6. The Judge ensures strict compliance with procedure and rules of evidence, "leaving" the parties or their lawyers to present their cases. 7. Proceeding can often reflect a competitive struggle to win. 	<ol style="list-style-type: none"> 1. The Judge who hears and decides the case is also the person who investigates the case. 2. Witnesses are called and examined by the Judge. 3. Both sides will reply to the court once the court has finished examining the case for either side. 4. Lawyers are barred from representing party. 5. There is no distinct pre-trial phase where parties' lawyers conduct of witnesses. 6. Purpose of the court is to ascertain the truth rather than 'referee' a contest conducted by the parties and their lawyers. 7. Less formal rules of evidence
<p>In Samoa, the District Court, Supreme Court and Court of Appeal are based on the adversarial system.</p>	<p>In Samoa, the Land and Titles Court is based on the inquisitorial system. In this way it is unique.</p>

(Source: Land and Titles Court Bench Book, 2003: 30).

Today, the Land and Titles Court is a court of record, an independent judiciary with exclusive jurisdiction over Samoan names and titles as well as claims and disputes relating to customary land and law relating to custom and usage to all matters that comes before it. It functions separately from magistrate and a supreme court both with original and appellate jurisdiction. Since 330 villages are organized along principles of kin relations and family titles the German Administration rightly recognized the need for a centralized mechanism to deal with numerous disputes arising from multiple contests over family titles that became vacant on the death of its holder. The Court plays a vital role in resolving issues relating to family titles and attendant land. As B. C. Spring notes that ‘It would be fair to say that this court is probably to the Samoan mind the most important court in the land.’²⁷

Samoan Judges’ Decision

The decision making role of the Land and Titles Court was based on custom and usage and this was basically adopted from the very beginning during colonial regimes in Samoa. But because “custom and usage” were not codified, Samoan Judges had nothing to fall back except their own knowledge and these differed between Judges; some significantly experiences and views of custom and usages and what fits to the disputing matters. Vaai observes that:

the Court’s exercise of authority and jurisdiction in its decision-making was otherwise unfettered and as a matter of convenience the decision-makers applied as they saw fit anything and whatever knowledge and understanding members of the Court possessed on Samoan customs.²⁸

Powles states that the:

...case with the most fields of human activity, legal systems suffer from the weakness that ‘knowledge is power’ Adjudicators, official, lawyers, chiefs and elders are all tempted to use their knowledge of the system not only to affect the outcome of the dispute in hand which may be quite appropriate – but also to preserve their influence and status in the eyes of the public.²⁹

²⁷ Judicial System of Western Samoa.

²⁸ Vaai 1999:216.

²⁹ Powles 1988:22.

Samoan Judges are supposed to be loyal to their oath to administer justice “without fear or favour, affection or will’ a measure of discipline in his/her life, a life sacrifices and dedication to the task of administering fair and impartial justice. Judicial isolation is difficult to attain in small countries where extended family ties play such important part in life.³⁰

Adjudicators are appointed to position of authority which impinges upon the lives of other citizens in a special way. The relationship between judge and judged is man-made and difficult to manage. Question of selection, independence and impartiality has always been the hardest, and are interconnected.³¹

Samoan judges were appointed on the basis of a good command of local history, custom and tradition, bilingual and most importantly as holders of senior *matai* titles.³² Sapolu also asserts that chiefly status is a qualification for office and Samoan Judges are lay adjudicators with no legal qualification³³ with the expectation they could interpret *aganu’u ma agai’fanua* with acceptable principles to Samoans as it deemed relevant at the time. But what is deemed acceptable and relevant at the time was never made explicit.

Tuimaleali’ifano observes that:

...whatever the court does, custom is transformed...In the absence of a coherent and accessible body of documentary sources, how that transformation process takes form is done by comparing what the litigants interpret as custom and what elements are asserted by disputants, and what elements are accommodated, ignored and introduced by the court.³⁴

Tuimaleali’ifano argued that the terms *aganu’u* and *agai’fanua* or custom and usage of Samoan people as the Court’s decisions are based still remain undefined. The difference of custom and usage between one village and the other may for some purposes are of greater significance to the people concerned. This was also illustrated by Epati, ‘the task of interpretation, definition and implementation of these respected and time honoured customs is

³⁰ Donne 1988:4.

³¹ Powles 1988:26.

³² Tuimaleali’ifano 1997:185.

³³ Sapolu 1988:62.

³⁴ Tuimaleali’ifano 1997:185.

becoming more difficult as external influences multiply.³⁵ Powles argued that in many countries in the region, the rules of law and procedure are out of date, inconsistent, unnecessarily complicated or just inadequate. Where this occurs, it is not surprising that too much power and discretion are assumed by courts and staffs.³⁶ Using of informal mediation in the traditional manner to full European style proceedings, with various techniques employed in local and land courts lying in between. Tuimalealiifano, Epati and Powles emphasized that its time to review the Constitution (with the acceptance of the 2/3 of the majority of Samoan people) on matter regarding “communal rights” and ‘individual rights’; to review the longstanding Land and Title Act 1981. The holding of customary land and titles using accepted “custom and usages” by Samoa as being forced at the relevant time which is also absent from the Act, Thus, the Land and Titles legislation and practice needs a complete overhaul, involving considerable expansion to meet rapidly growing needs and qualified and dedicated Judges and court officials to secure harmony and peace in the society.

Law and procedure come together to determine how much power an adjudicator possesses. Generally speaking the decision-maker with the widest discretion – the one least circumscribed by law and procedure – exercises the most power. Yet, from the descriptions in this volume of the structure and staffing of the courts, it is apparent that, more often than not, the first-instance adjudicators with wider discretions are those who have had less training and experience in court decision -making.³⁷

Samoan Judges and Assessors of the Land and Titles Court, which is often referred to people’s court, is not without difficulties confronting it in the conduct of its role. In reality the Land and Titles Court’s decisions cannot satisfy everyone. Disputing parties dissatisfied with the Court’s decisions thus appeal to the court of appeal. Numerous criticisms and complaints from disputant parties as is noticeable in the increasing number of backlog of cases and appeal applications both at Tuasivi, Savai’i and Mulinuu, Upolu which will be illustrated by Chapter Three of the thesis

³⁵ Epati 1988:169.

³⁶ Powles 1998: 28.

³⁷ Powles 1988:25.

Powles emphasizes that Samoan Judges and Assessors and even court officials faced daily conflicts, inconsistencies and incompatibilities because of the following reasons:

- between traditional ideas and Christian teaching, as to what is right and wrong, or fair, or just.
- between group based and individual-oriented societies as to notions of responsibility
- between unwritten custom and written statutes – as to both the way they expressed and the content of what they say;
- between the authority of local chiefs, elders and councils, and that of the courts and agencies of central (and regional) governments, often called upon to deal with the same matter
- between customary manners and methods of communicating, and formal court procedures
- between local attitudes to statements which are accepted as proof of facts and strict rules of evidence such as exclusive of hearsay and the burden and standard of proof;
- between the different backgrounds and training of personnel such as adjudicators and lawyers, within the same jurisdiction; and
- between the function of the court as the arbiter of isolated breaches and disputes and its function as an agent of social or government policy to mention only some.³⁸

When family disputes were not settled within extended families, village or district, the Land and Titles Court becomes the last resort. The petitions to the Land and Titles Court includes land disputes, *matai* titles dispute, banishment from customary land, height of foundation/size of a house, right to confer *taupou* titles, confirmation of a private venture on customary land, and objections to licenses for commercial purposes on customary land, the notion of freedom of religion and residence in the village level and burials.

³⁸ Powles 1988:8.

Impact of the Land and Titles Court's Decision

Customary land and family titles

Village councils are regarded as customary adjudicators and play an important role in daily lives of Samoans at the village level even now. When the Land and Titles applies custom and usage as law, it tends to support the decision of the village council. It's not only that the village council can act as lawmaker and judiciary with no appeal but the Village *Fono* Act 1990 reinforces and strengthens the council in its decision making role but limited to economic development and public health activities. It formalizes the power of *matai* and local hierarchies. This is illustrated in the case study to be presented in a later Chapter by the banishment of the *matai* and his sisters from Saleilua, Upolu and Saipipi and Falealupo, Savai'i.³⁹ The majority of village council decisions tend to threaten peoples individual right, religious freedom, freedom of residence, equality under law as enshrined in the Constitution. Meleisea pointed out that 'the act allows *matai* to force compliance with their dictates through fines or expulsion from the village. Increasingly, rural people see *fa'a Samoa* as another word of oppression'⁴⁰. Ulafala Aiavao on the other hand asserts that 'the intension of the law was not to create new agencies but to officially acknowledge the work of ancient one'.⁴¹ Both Meleisea and Aiavao argued that the Act was an exercise because village councils have never needed any outside forces such as government to legitimize their decisions. The formation of the Land and Titles Court imparted tremendously on village council to seek legitimacy of its rules and punishment. When one considers that there are more than 330 separate jurisdictions in the country with its own set of protocols and precedents, this can pose a problem for the court. A growing number of people live outside the jurisdiction of the village council on either freehold land, leased or government land. There is some element of discrimination in the way laws can be applied to different groups of people. The use of punishment at village level and by the court system officially exposes offender to double jeopardy sanctioned by the state, although village penalties can be mitigating.

³⁹ See case studies, Chapter 4 and Chapter 5.

⁴⁰ Meleisea 2000:198.

⁴¹ Ulafala 1993. *Islands Business Pacific*, November.

The splitting of titles among several holders had been frowned upon, although occasionally and increasingly tolerated. Creation of new titles has been evident ever since the 1960s when eligibility to stand for election was limited to *matai* titleholders. After independence in 1962, *matai* title sharing and splitting became increasingly recognized by the Land and Titles Court as a method of resolving village disputes. The practice of splitting titles by the Land and Titles Court decision between multiple incumbents reflected the fact that families are moving toward breaking up into smaller units – the reason are unclear but it suggests better management land and family titles. Titles formerly held by one person have been split with the understanding that each branch will develop their own titleholders without further consultation with other branches. This also the causes many disputes within the extended family especially when decisions given to sub branches of the title holds can often be disputed as to who has the *pule* – or authority to bestow titles and the cause of the increasing number of impending Court cases.

The tendency toward individuality or nucleated families can be seen in the number of families that have sought freehold land closer to town. The effect is that they are distanced from the family *matai* and the village council. The notion of descent groups of extended families living together is weakened, a sign of re-structuring local society along new lines. As they split, the rivalry among family branches tends to increase and evident in the contest of titles and attenuating land assets. Without formal service (*tautua*) and obligatory contributions to family and village collections (*monotaga*), village people in urban areas are free to adopt other strategies. Loyalty and service to *matai* has become weak as traditional economic and political interdependencies are undermined by the emergence of economic and political institutions which is based on the rights of the individual. At the same time, high ranking chiefs continue to invoke traditional privilege to prevent those who have achieved status through the modern market economy from overshadowing them.⁴² Villagers tend to move out of villages to which their titles belong yet continue to enjoy the privileges from a village social system which the young are unable to sustain under the demands of an oppressive authoritarian gerontocracy'.⁴³

⁴² Ibid p.196.

⁴³ Tuimaleali'ifano 1997:302.

Having exclusive jurisdiction over Samoan titles and customary land as the guardian of Samoan custom and traditions places a heavy burden on the court. The task vested with the Land and Titles Court is vital, complex and very challenging in a way that every dispute regarding land or *matai* titles reported or brought to the attention of the Land and Titles Court Department if not properly handled, impacts every family present, and future generation. About 90 percent of Samoa's population live under the authority of the *matai* who collectively control over 81 percent of the land as customary land. The *matai* plays a major role in managing the family lands and other family assets, the well being of his family and representing it in the village councils. The case studies that follow show how the Land and Tiles Court operates as a modern institution. It does not concern itself with statutes so much as more with Samoa's unwritten customary law.⁴⁴ Despite the relatively high profile of the court, there is the constant worry that more needs to be done to avoid the perception that it dispenses with 'second-class justice'.⁴⁵

A considerable amount of work has been done by Samoan Judges in dealing with the very important matters and disputes concerning customary land and family titles. The constitutional role of the judiciary of which Judges of the Land and Titles Court are to administer justice fairly, honestly and impartially on the law and the evidence before it, without external pressure or influence and without fear or interference from any Samoan. The Constitution of Samoa 1962 emphasizes that the *matai* title and customary land be held in accordance with "Samoa custom and usage". However, neither the Constitution nor the Land and Titles Act 1981 defines "custom and usage" to apply and accepted by Samoa at the relevant times. The interpretation of the Land and Titles Act 1981 and its practice administered by the Land and Titles Court causing much confusing to many Samoans illustrated in the next Chapter.

⁴⁴ Gaven Donne 1988:4.

⁴⁵ Powles 1998:21.

CHAPTER 3

The Land and Titles Act 1981

What is the position of the Land and Titles Court in the constitution and what are its functions in terms of the Land and Titles Act 1981? What are the roles and powers of the Court, Chief Executives Officer and the Judges themselves? The purpose of spelling out their functions is to expose the disparities evident between the principles as prescribed by the 1981 Act and the reality.⁴⁶ The chapter spells out some of the more important roles and powers of the court and its administration in terms of the Act, which relates specifically to issues rights of villagers living outside on one hand and rights as a villager living within a village under the jurisdiction of a village council. The ways these issues are played out in the court under the Act are illustrated by four case studies in subsequent chapters 4 to 8. Other questions include (1) the nature of the disparities, (2) are the disparities between principle and practice increasing, and (3) what are the consequences of the discrepancies on the administration of justice. These are further dealt with in the concluding chapter 9.

The chapter concludes with some disturbing statistics from the Department's Annual Reports (1994 – 2001) on the court's performance. What do the figures of the court reveal about the effectiveness of the court as a dispenser of justice?

Constitution

Samoa's Constitution, like many other Pacific Island constitutions, provides the political, administrative and judicial framework of a newly independent country. As the paramount law it establishes Samoa's modern system of government, largely based on the Westminster model – parliament, executive and independent judiciary. The judiciary comprises the Court of Appeal, the Supreme Court, District Court and the Land and Titles Court. Article 103 of the Constitution establishes the jurisdiction of the court in relation to *matai* titles and customary

⁴⁶ See Appendix A.1 and Appendix A.2 outlining the structure of the courts and relationship of the different sources of law as they apply to Samoa.

land. The instrument that spells out the jurisdiction of the court is the Land and Titles Act of 1981.

The New Zealand administration (1914-1961) enacted the Native Land and Titles Protection Ordinance in 1934. It was enacted in pursuance of the Samoa Act 1921. The Land and Titles Court was constituted as a 'court of record' to be called the Native Land and Titles Commission. Some changes were made in its constitution by the Native Land and Titles Protection Amendment Ordinance 1937.

The Land and Titles Act 1981, as amended by the Land and Titles Amendment Act 1991/1992, spell out the function of the court. Section 4 (1) of the Act (1981) states that the Court 'shall continue to have all jurisdictions it exercised prior to this Act coming into force'. Before 1981, the Land and Titles Court was included under the umbrella of the Justice Department. The Land and Titles Act 1981 re-established the Department of Land and Titles as an entity in its own right. Meleisea observes:

The Land and Titles Court is now the only institution of the central government with specific role of guarding and defining *fa'a-Samoa*. In 1981, an Act of Parliament was passed establishing the Land and Titles Court as a separate department under the Ministry of Justice. Without clearly realizing the implications, the Government was also consolidating the existence of an institution that continues to perpetuate contradictions between the two types of authority.⁴⁷

As a Court of records the Land and Titles Court stores the files of many families, villages and districts. They constitute a rich heritage of traditional history. The Court's functions were enforced as part of the machinery of the government to maintain the *fa'a-Samoa* through its decisions and procedures. The court has exclusive jurisdiction over *suafa matai* (family titles) and *fanua faaleaganu'u* (customary land). The decisions are based on *aganu'u ma agai'fanua* (custom and usage). This is the single most important clause in the whole Act because it establishes the criteria under which decisions are to be determined, particularly, decisions that are seen as customary.

⁴⁷ Meleisea 1987:207.

According to the 1981 Act, Samoan custom and usage is interpreted to mean the ‘customs and usage’ of Western Samoa which has been accepted as being in force at the relevant time. It includes:

- (a) ‘The principles of custom and usage accepted by the people of Samoa in general (*aganu’u*) and,
- (b) The customs and usages accepted as being in force in respect of a particular place or matter’.(*agaifanua*)⁴⁸

A closer inspection of what constitutes custom, usage as accepted by Samoans with respect to a particular place reveals a disconcerting emptiness on a statement defining these important concepts. This is particularly so for a largely rustic population. The lack of clear definition on what constitutes custom and usage leads to wide interpretation. The meanings of relevant time and what mechanisms of custom or law are required to determine acceptance are absent from the Act. In the absence of any clear statement on the category of people by which such custom and law determine acceptance, one can only presume that it refers to family titleholders. In the absence of such definitions, the determination of *pule* (authority) to appoint *matai* titles, its attendant chiefly privileges and appurtenant land is vested ultimately with the Land and Titles Court. The basis of the determination is specifically stated in section 37 of the 1981 Act. It provides that, ‘In all matters before it, the court shall apply the law relating to custom and usage (*tulafono e faatatau i aganu’u ma agaifanua*) and any other enactment expressed to oral apply to the court (*ma nisi mea e talafeagai ma le faamasinoga*)’.

In the absence of a corpus of written law or public register of legal opinions on the court judgments relating to the application of custom and usage to chiefly titles and customary land, the definition of custom and usage is largely determined by the decision making process of the Land and Titles Court of the *fa’amasino Samoa* (Samoan judges). In other words, it is the accumulative wisdom of the *matai* sitting as judges that determines what is and what is not custom. Regardless of whether this wisdom results in contradictory opinions use to others personal knowledge which is based on his/her local knowledge of customs in his/her village and district.They do not appreciate historical processes and that impact on culture.

⁴⁸ Land and Titles Act 1981, Part 1 Section 2: 3.

The Land and Titles Court Constitution and the Land and Titles Act 1981

In accordance with custom and usage *matai* judges determine *suafa matai* (*matai* titles) and customary land which include:

1. Matai titles

- *Pule i le suafa matai* or authority over *matai* titles.
- *Faia po o le aia i le suafa matai* or rights or obligations attached to the title.
- *Sailia o sulii i le suafa matai* or defining heirs to *matai* titles.
- *Filifilia o se suafa matai* or intention to appoint a person to be a holder of a *matai* name or title

2. Customary Lands

- *Pule ma le puleaina* or ownership and control.
- *Aia i le nofoiaina o le fanua* or right of occupation.
- *Fa'atula'ieseina* or eviction/banishment
- *Fa'asalaga* or punishment/conviction
- *Fa'amautuina o tuaoi* or defining boundaries.
- *Pulefa'amau o se fanua fa'a-le-aganuu* or registration of an individual or communal's *pule* (right or prior right) on customary land.

Matter of Procedures

Appointment to Matai Titles

The appointment of a person to family titles is described under section 34 (2) and section 23 (1), (2) of the (LTC) Act of 1981. The Registrar of the Land and Titles Court issues a *pepa saofa'i* (bestowal certificate) to confirm the appointment to a newly elected family titleholder. When there is an objection, a petition is lodged with the Registrar. The Registrar also has power to refuse registration if the village council did not attend the *saofai (e le'i usu le nu'u)*

The Land and Titles Act 1981 stipulate that within seven (7) days from the date of appointment, the new titleholder must give notice in writing to the *pulenu'u/sui o le nu'u* (village mayor) and to the Registrar. Within fourteen (14) days from the installation, the village *pulenu'u* must confirm that the title belongs to the village, and record the particulars of the appointment. A copy of the certificate (*pepa saofa'i*) is given to the appointee and the original to the Registrar.⁴⁹ While the Act 1981 does not discourage an installation in the face of an objection, the current practice of the court discourages installations until objections are resolved. This is based on two seemingly justifiable reasons. First it would bring rival parties together to at least attempt a resolution, and second it would spare the sponsors of an installation ceremony, time and expense, should their party lose in the event of a subsequent court case. Kamu observes that

The new *matai* makes a lavish presentation of food and gifts not only to the village [and church clerics] but also to whoever happens to be present from other districts during the day...shockingly expensive and burdensome.⁵⁰

Another contentious issue lies in the power of the Registrar of the Land and Titles Court. The Act empowers the Registrar to delete a title from the register of *matai* titles. The power can undermine the right of families and the village council to install titleholders. For example, in every village the *saofa'i* is performed to acknowledge the acceptance and admission of the *matai* in the village council. A *tuua o le nu'u* (elder/senior *matai*) of the village *fa'apaia* (ordains) the new titleholders, gives a speech of acceptance and well wishes to the new titleholders to serve in the village affair. During the *ava* (kava) ceremony the new *matai* is first served with *ava* before the village council. So'o and Huffer observed that 'even though a *matai* title is rendered legal when it is officially registered in the Land and Titles Court, it is the village government that legitimates it'.⁵¹ The Land and Titles Court only registers a new title after the traditional title conferring ceremony (at which the village government plays the most important role) has taken place. It is the traditional prerogative of a village to accept or reject a new titleholder from being a member of its council of *matai*-the highest traditional

⁴⁹ See Appendix A.3 and A.4, duty of the Registrar over petition lodge to the court on family titles and customary land. So'o, A. explained the condition of democratic system of government (civil & political liberty) in Samoa.

⁵⁰ Kamu 1996:4.

⁵¹ Huffer & So'o 2000:134.

authority in the village. In practice, the Registrar invoked this power sparingly but in rare cases where this power has been applied, villages can and do act on their own behalf by using unregistered *matai* in the village council.

For instance, former Registrar of the Court rejected the Tafeamaali'i title of Foyaluga, Savaii. The Registrar argued that the Tafeamaali'i title does not belong to Foyaluga village. However, the village council officially legitimized it during the title conferring ceremony. The belief is '*a usu matai o le nu'u i se saofa'i ua aloaia le nofo i totonu o le nu'u*' (if the village council endorses an installation, the new titleholder is accepted in the village). When the *fa'apogai* or the founder (Fuli Pati) of the new titleholder was asked about the Registrar's objection, he explained that the Registrar has no knowledge of the family genealogy and the village history. In this case, every family is bestowed the new title in order to carry the name of the founding ancestors of the land and its taboo (*fanua ma lona tapuafanua*). According to Tcherkezoff that 'the respect for hierarchy which is built on the longevity of the genealogy of each family name and its relation to the founding ancestor within the village or district history, still determines a large part of social life in the village'.⁵² Despite the Registrar's objection, the Tafeamaali'i title is used and recognized in Foyaluga.

Customary Land: Fanua Fa'a-le-Aganu'u ma Pulefa'amaui

The Land and Titles Act 1981 has been found wanting with respect to customary land. According to the Land and Titles Act (1981: 4) *pulefa'amaui* 'is the ownership of any customary land or control of any Samoan name or title either by a person in his sole right or on behalf of any Samoan title, family, village or district'.⁵³ This means that a *pulefa'amaui* can be held by a *ta'ule'ale'a* or non-*matai* person. The court practice is that only the *matai* can claim the *pulefa'amaui* not the untitled person. This has contributed to inconsistencies not only in interpretation but application. Another area of concern arises from section 15 of the Act. It states that the 'Registrar on being satisfied that the claim or intention over customary land and titles is bona fide' (*ua talitonu le Resitara ma ua ia fa'amaonia e fa'amaoni le agaga o le talosaga po o le fa'amoemoe o sea pulefa'amaui*) to the titleholder but not the untitled person.

⁵² Tcherkezoff 2000:120.

⁵³ Land Titles Act 1981:4.

This has contributed to inconsistencies not only in interpretation but application. Another area of concern arises from section 15 of the Act. In practice, the Registrar and even the court does not define the real meaning of *pulefa'amau* in accordance with custom and usage or the Act. For instance, it is unclear whether the claim for *pulefa'amau* provides security and protection of family land from future disputes with other family members. An example of this confusion is illustrated in chapter 8.

Leasing

There is an increasing desire to convert customary land to individual titles and many problems arise over the conversion. Traditionally, the land is not individually owned or traded as commodity. No one in the *aiga* or even the *matai* has the right to sell the land. A way around this is for the *matai* to arrange a lease by publishing the terms in the *Savali* (government newspaper). When no objections are raised after a stipulated period for lodging objections, the *matai* can issue his lease of customary land. In another case (see chapter 6), a government land grant awarded to refugees early in the 20th century was subsequently converted to customary land under the authority of the village council. This has also become controversial because of the imposition of a village structure on seemingly freehold land.⁵⁴

The Procedures and Petitions

The Land and Titles Act 1981 guide the administration of the Land and Titles Court. The hearings and procedures are a combination of custom and law. However, when custom and usage do not apply, the court acts in such a manner it considers consistent with natural justice and convenience. The Act of 1981 is not clear on what kind of petition may be published in the *Savali* and what kind of petition may not to be published, in accordance to section 40, 41 and 46/81 of the Act.

Notice of every sitting of the court shall be published in the *Savali* at least 21 days before commencement, the petition includes the names of parties or other proceeding, and the nature of the disputes to be heard and sought. A petition,

⁵⁴ See Chapter 6 and Appendix A.5, objection over customary land in doubt.

which has not been notified in accordance with section 41, shall not be heard except by leave of the Court given on terms and conditions, which the Court may impose.⁵⁵

A petitioner must lodge his/her petition with the assistance of the Registrar, or solicitors. Lawyers are not allowed to represent a party in the court unless of course he/she is a party to the case. The *matai* as head of each *aiga* is normally the leader of the disputing party; unless the *matai* title of the disputing party is vacant, then a *suli* (heir) can act as a representative with the permission of the President of the Court. Each party presents a written submission including *talatu'utu'u gutu* (oral traditions) and *gafa* (genealogy).

When confusion arises over procedures, judges seek more evidences through petitions and written submissions before finalizing their decision. Any decision of the court is based on the petition filed by each party. Judges and Assessors' examination and deliberation are always based on petitions. Samoans who bring their disputes to the court often do not understand the importance of the petition. The petition is valuable as the written submission and testimony from disputing party during the court investigation. For instance, when the Court is in session, additional party/parties request for permission of the Court in lodging his/her petition on disputing matter. The Court will then permit the petitioner/s to submit his/her written submission with a fee of \$60.00, which should be paid even if the petition is declined.⁵⁶

Fa'amasino Samoa and Fa'atunu - Samoan Judges and Assessors

The duty of the judges and assessors is to study and deliberate cases based on the brief reports prepared by the Court officers on the history of the case. Their investigation is based on *talosaga* (petition), *tala tusia* (written submission), and *mau* (evidence/witness) provided by the parties in the court. When the matter is not in dispute such as *pulefa'amau*, and there is no objection to new appointment to *matai* title, then the president or a deputy president sits and acts alone to legally confirmed the *pulefa'amau*. When more than one party is involved in the dispute then the president or deputy president, two of whom are *fa'amasino Samoa* (Samoan

⁵⁵ Land and Titles Act 1981: 20-21.

⁵⁶ See Appendix A.6, jurisdiction of the Land and Titles Court.

judges) and two *fa'atonu* (Assessors) conduct the case.⁵⁷ As the court defines it, their role is to administer the court proceedings without favoritism. Are the *fa'amasino Samoa* abiding by their judicial oath, which states,

I swear by Almighty God that I will well truly serve the independent State of Samoa in the office...in accordance with the Constitution and the law, and I will do right to all manner of people without fear or favor affection or ill will.⁵⁸

The oaths clearly illustrate that the Judges should truly serve their duties diligently and act within the authority of the law. They should conduct themselves with integrity and equality to all parties' participating in the court. As an independent judiciary, Judges should refrain from political affiliation and maintain the high standard of judicial conduct. The Judges should be consistent with their decision-making and refrain from affection and ill will. It is common for Samoan Judges to have multiple connections to various *aiga* disputing in the court. These are rooted in *gafa* (genealogy) and *suafa matai* (family titles), *faiava/nofotane* (in-laws), and *vaegatama* (adoptions). In fact, Samoan Judge must refrain from a case that he/she has a connection with any member of the family/party involved in a court case.

Moreover, the President or Deputy President of the Land and Titles Court must understand what the main purpose of the dispute is about. Thus he/she can easily approach the litigant and guide any discussion in court. the President must give the opportunity to other members of the bench and the disputing parties to express their opinions. Furthermore, the President or Deputy President presiding should select his panel carefully in respect of any hearing. In accordance with the Act 1981, the court panel for the hearing of any case cannot be changed until the court has finalized its decision.⁵⁹ The case of the *pule* of the Talooema'agao title of Satalo is a good example of this. After two days of the court proceeding one of the panel judges fell ill and was replaced by a senior judge of the Court under the ruling of the Deputy President. The court continued with the same investigation without fresh examination when the new judge substituted to the presiding bench. The decision of the *pule* of the Talooema'agao title was appealed due to the senior judge replacement.

⁵⁷ See appendix A.7, the court sitting.

⁵⁸ Constitution of Western Samoa 1960:55.

⁵⁹ Land and Titles Act 1981 Section 35 Part 4:19.

The Reality in the Court Decisions

Some statistics from the Department's Annual Reports (1994 – 2001) on the court's performance makes for interesting comment and suggestion. What do the figures of the court reveal about the effectiveness of the court as a dispenser of justice? One natural deduction from the arbitrary nature court decisions based on undefined notion of custom and usage. i.e. relying on the determination of diverse group of *matai* drawn from a diverse walks of life, backgrounds, training and experience.

While the Courts' decisions are determined by custom and usage the ultimate determinant are the judges in accordance with the majority opinion of its members present. The judges thus occupy powerful positions. In theory, the judges should be ruthlessly independent. Sometimes they fall short of this requirement.

The number of cases has increased over the years and while there are many reasons for the increase, one of the most significant is that of adjournment. Furthermore, the presiding bench has the discretions and power to grant adjournments for cases as they see appropriate. The category of reasons for adjournment cases is listed in the graph below.

Table 1: Reasons for Adjournment 1994 – 1999

Reasons for Adjournment	1994	1995	1996	1997	1998	1999	Total
Pending filing/publication of petition in the Savali	40	54	87	120	122	66	489
Medical Certificate	21	38	48	43	51	26	227
Pending a related appeal matter	17	20	25	14	37	14	127
Unavailability of parties	15	17	26	31	28	15	132
Pending appointment to title	9	15	18	15	25	8	90
No reason given but application for adjournment granted	13	12	15	13	18	5	76
Summons not served	9	6	14	23	10	8	73
Awaiting President's decision	9	6	14	23	10	8	70
Parliament Meeting	5	5	6	5	11	5	37
Objection to the relationship of a bench member to a party	9	4	16	21	10	12	72
See if reconciliation is possible	10	5	15	26	8	3	67
Pending land commission decision	4	2	5	16	7	1	35
Involvement of a party with two subsequent but different cases	2	2	3	6	6	0	19
Involvement of parties with two subsequent but different cases	5	3	6	12	3	2	31
Public Holiday	0	2	2	2	2	0	8
For office or court visit	3	2	3	4	0	0	12
Pending decision of or other related petition to the case	2	3	4	6	1	2	18
To be heard together with a related matter	5	2	2	3	1	2	15
40+Pending publication of title in Savali	1	3	5	7	1	2	19
Pending appointment of party leader	1	2	3	11	1	1	19
To complete distribution of petition copies	1	1	0	1	1	0	4
To find a case file	0	0	0	0	1	0	1
Previous adjournment fee not fully paid	0	0	0	0	1	3	4
Total	181	204	317	402	355	183	1642

(Department of Land and Titles Court Annual Report, 1994 -1999: 20).

When the Act is silent on the definition of what constitutes custom and usage, the court is forced to act and in doing so, invoke a wide range of interpretations based on a diverse amalgam of background and experiences of matai judges. Their interpretations coupled with ‘favorite tactic of frustrating court procedures’, results in the long delays and mounting

backlog and creates further tension within the disputed families and villages. In the late 1990s, the Registrar noted that it would take up to ten years to catch up with the backlog.⁶⁰

The Court's Performance

The following table clearly seems to suggest that the court is not providing an effective service or one that is satisfactory in the long term. The following tables illustrate an mounting backlog.⁶¹

Table 2: Decision Given and Adjourned, 1994 –1999

Years	1994	1995	1996	1997	1998	1999	Total
Cases with decision given	383	433	356	347	333	297	2149
Adjourned Cases	280	218	461	518	511	595	2583
Total cases	663	651	817	865	844	892	4732

(Department of the Land and Titles Court Annual Report, 1994 –1999: 18)

⁶⁰ Tuimaleali'ifano 1997:16.

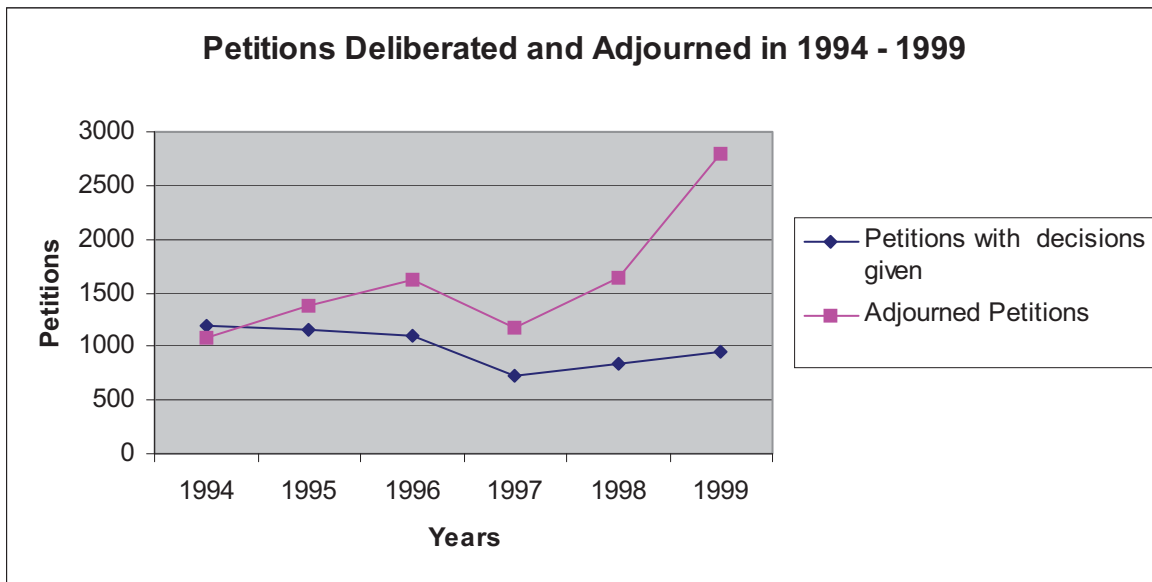
⁶¹ See appendix a.8, major reasons of Adjourned cases at the Land and Titles Court.

Table 3: Petitions with Decision Given and Adjournd Petitions, 1994 – 2001

Years	1994	1995	1996	1997	1998	1999	Total
Petitions with decisions given	1184	1150	1102	719	836	949	5940
Adjournd Petitions	1074	1384	1626	1179	1639	2794	9696
Total Petitions	2258	2534	2728	1898	2475	3743	15636

(Department of Land and Titles Court Annual Report, 1994 – 1999: 18).

Graph 1: Petitions with Decision Given and Petitions Adjournd, 1994 – 1999



(Department of Land and Titles Court Annual Report, 1994 – 1999:19).

Tables 2 and 3 shows that the number of adjournd cases increased dramatically than the number of cases with decision given. It also shows that many disputes are lodged with the court annually.

Table 4: Decision Given and Adjournd, 2000 – 2001

	Mulinuu		Tuasivi		Total	
	<u>2000</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>
1. Cases filed	536	474	308	295	844	769
2. Adjournd	369	284	177	177	546	461
3. Decisions	167	290	138	118	305	408

(Department of Land and Titles Court Annual Report, 2000 – 2001: 14).

What about the 21st century? Has the trend changed? From the figures obtained for 2000 to 2001, the answer is negative. While the total number of cases had dropped, the gap between the number of adjournd and decided cases continues to widen.

Table 4 illustrates that in 2000, the total number of cases filed for both Mulinu'u and Tuasivi was 844. From the 844 cases, 546 were adjournd and only 305 cases with decisions given. In 2001, 769 cases were fixed, 461 cases were adjournd and only 408 were decided.

Table 5: Decision Given and Petitions Adjournd, 2000 –2001

	Mulinuu		Tuasivi		Total	
	<u>2000</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>
1. Petitions filed	1955	1532	1043	638	2998	2170
2. Adjournd	1485	1028	709	302	2194	1330
3. Decisions	470	504	334	336	804	840

(Department of Land and Titles Court Annual Report, 2000 – 2001:14).

According to figures in table 4 and table 5 show that in 2000, 844 cases filed for Mulinu'u and Tuasivi comprise 2998 petitions. The 546 adjournd cases comprise 2194 petitions. The 305 cases with decision given comprise 976 petitions. In 2001, approximately 769 filed cases from Mulinu'u and Tuasivi totaled 2170 petitions. The 461 adjournd cases comprise 1330 adjournd petitions. The 408 cases with decisions given comprise 840 petitions.

Table 4 and Table 5 show that the number of adjourned cases has been slightly decreasing every year. According to the Annual Report (2000–2001), the percentage of adjourned cases in 2000 is approximately 64%, and in 2001, there was a slight decrease to 60%.

Court of Appeal

When the Court's decision is appealed to the Court of Appeal according to the Act the President sitting alone, decides whether to grant or refuse leave to appeal.⁶²

The application for leave to Appeal shall be heard before the President on a date to be notified to each party by the Registrar, all parties may be heard and may make submission. The court hearing shall not be open to members of the public.⁶³

If the appeal is granted, the President sets aside a date for the appeal case against the original decision. If leave to appeal is refused, the process ends and the original decision of the court is final. When granted, the court consists of the President and two Judges of the Land Titles Court, who were not part of the court, which rendered the original decision. During the court hearing every appeal has all the powers and jurisdiction of the Land and Titles Court. Every appeal shall be presented by way of rehearing so the Judges can hear either part or the whole of the original decision, depending on what was granted in the leave to appeal application. Moreover, Judges may also exercise their judgment in this matter, as the decision of the Court of Appeal is final. As stated in section 71 of the Act (1981) decisions of the Court of Appeal cannot be reviewed by another court. However, there are cases where the Supreme Court has reviewed decisions of the Land and Titles Court in relation to matters of fundamental rights. This is another significant reason for the backlog of cases, because the decisions of the Appeal Court have been further appealed by referral to the Supreme Court.⁶⁴

⁶² See Appendix A.9, Court of Appeal and it's basic grounds – apply for Leave to Appeal of the Land and Titles Court's decision which is also known as decision of the Lower Court.

⁶³ Land and Titles Act 1981:31.

⁶⁴ See Appendix A.10 the rule of the court.

Table 6: Backlog of Appeal Cases at the Court of Appeal, 1994 – 1999

	1994	1995	1996	1997	1998	1999
Cases filed	50	59	49	50	54	66
Cases disposed of	31	28	32	46	18	34
Backlog at the end	186	217	234	238	274	306

(Department of Land and Titles Court Annual Report, 1994 – 1999: 23).

Table 7: Backlog at the Court of Appeal between 2000 – 2001

	Mulinuu		Tuasivi		Total	
	2000	2001	2000	2001	2000	2001
1. Applications Filed:						
a. Land	17			5	22	
b. Matai	38			12	50	
c. Removals	5			1	6	
Total	60			18	78	
2. Cases Heard:						
a. Land	15				15	
b. Matai	14				14	
c. Removal	3				3	
Total	32				32	

(Department of the Land and Titles Court Department, 2000 – 2001: 20).

Tables 6 and 7 show the increasing number of backlog cases pending before the Court of Appeal. The Annual Reports of the Land and Title Department demonstrate the increasing dissatisfaction over the Land and Title Court’s decisions (Lower Court) as evident from the increasing number of applications filed to the Court of Appeal.

The Act and Its Consequences on the Court's Performance

The mounting backlog of adjourned cases seems to suggest that the Act and the court are not connecting. The backlog has severe consequences on families, villages and the state of the national economy. As delays becomes a reality, an increasing number of villagers move from rural to urban area to look for educational and work opportunities instead of staying on family plantation lands, the mainstay of the extended family's livelihood. Most of the families seek freehold land in urban area and stay with nuclear family until they can find their own home or migrate overseas. The result is increased tension in the urban area thus contributing to petty crimes and violence in town. Some will migrate overseas for better job opportunities and send back money (remittances) to their families. At the same time most of these people, as Liuaana asserts that the 'strength of the village (*taulele 'a*) have neglected their family (*aiga*) land, and as a result, food have become scarce and families are on the verge of starvation'.⁶⁵

Clearly, development effort suffers. Some *aiga* lands revert to bushland, subsistence plantations, and building a house (house half-built) on the family customary lands come to a stand still. Most *aiga* continue to fight as they await the court decision. To some extent, the people from the rural villages will convert to new religions in Apia town in rebellion to their rural village denominations and village *matai*. Once the family titles and land are settled back home they may return. But they tend to go back to their village with introduced beliefs or church. They believe that the freedom of religion and movement in Apia can also apply to the village in accordance with the *Fa'avae o Samoa* or the Constitution of the Independent State of Samoa.

This chapter has attempted to expose the contradiction between the Land and Titles Act 1981 and the way the court interprets custom and usage⁶⁶ in the absence of clear definitions. Increasingly, power is exercised by court officials in the vacuum. Although the Land and Titles Court is a court of customary law, the enforcement of its decision depends on the endorsement of the Magistrate Courts. Its functions remained unchanged as an administrative

⁶⁵ Liuaana 1993:100.

tribunal. What follows in chapters 4 to 8 are tensions between the two systems; the *tulafono fa'apapalagi* (western law) where human right is embraced by the constitution on one hand and collective right of village councils are embraced by the court as *tulafono fa'a-le-agamu'u* or customary law. How does the court behave in the absence of clear definitions of what is custom and usage? Conflict over religious freedom is the first illustration on the court's performance.

CHAPTER 4

Conflict over Religious Freedom

This chapter examines the way the court deals with the tension between fundamental right and a village council decision which is based on ‘custom and usage’ as prescribed by the Act of 1981 over the issue of religious freedom. Ever since Samoa accepted the London Missionary Society brand of Protestant Christianity in 1830, Christianity has played a major role in shaping village custom and usage. In each of the 330 villages, village council determines the number and denomination of Christian religion allowed to practice in the village – and over more than 150 years of operation, these churches have acquired the sanction of custom. Since the 1960s, new churches have been proselytizing and where they have been introduced in rural villages, they have posed a threat not only to churches sanctioned by village councils but also to the authority of village councils themselves who have by convention supported the 19th century churches – namely the churches introduced by the London Missionary Society, the Wesleyan Methodist mission and the Catholic orders of the Marist Fathers.

Fundamental Rights in the Constitution

Fundamental rights of the Constitution of the Independent State of Samoa follow the United Nations ‘Universal Declaration of Human Rights in 1948’. They are ‘right to life, right to personal liberty, freedom from inhumane treatment, freedom from forced labor, right to a fair trial, rights concerning criminal law, freedom of religion, rights concerning religious instruction, rights regarding freedom of speech, assembly, association, movement and residence, rights regarding property and freedom from discriminatory legislation.

Samoa like other Pacific countries, has embraced human rights. From the point of view of young Samoans, human rights signal a healthy democratic society in which all citizens enjoy equality and fundamental freedom.

Nevertheless, the increasing emphasis on individual right is perceived as counter-productive to village effort of maintaining cooperative sharing and caring communities. Samoan society is based on family ties and close kinship relations where each individual has a place with

defined rights and duties. The totality of one's integrity is found and rooted in the corporate, interrelated and interdependent behaviors, rhythms and flow of life of the society. Moreover, life in Samoa is very strongly corporate thus the individual hardly exists as an individual. The community counts for everything. We can only really understand a person's life and character in relation to the community within which he/she lives and develops his/her personality.

The *matai* system with its cultural norms and values are bounded within the term *va-tapuia*. *Va* literally means 'between' and *tapuia* means 'make sacred or to place (something) under restriction',⁶⁶ is a very important, even taboo relationship. The *aiga, nu'u, lotu and itumalo* 'who are bounded in and through relations emphasizes that there is no reference to private or personal rights but *va-tapuia* has a sacred relationship within the context of the community'.⁶⁷

In the *fa'a-matai*, *va-tapuia* is clearly defined as each member of the traditional structure must pay mutual respect and perform duties to others, morally and ethically. This shapes the society's distinctive way of life. In fact the right of each individual in the context of Samoan society clearly sets down the *tapu* between specific human relations. Le Tagaloa (1996:18) asserts that,

There is a sacred relationship between each one within the community and the environment. There is *va-tapuia* between brother and sister; the *va-tapuia* between the parent (especially father /mother) and offsprings; there is *va-tapuia* between male and female; between male and male – female and female; there is the *va-tapuia* between host and guest; there is the *va-tapuia* between *matai*, there is *va-tapuia* between dead and the living; there is the *va-tapuia* between man and the environment – sea and sky, flora and fauna; then there is the *va-tapuia* between the created and the 'Creator'.

This chapter is about how the court deals with the tension between the village council and the individual's rights to practice one's religion. The village council is basing their decision on custom and usage and it is on these concepts that the court must make their determination.

⁶⁶ Tofaeono 2000: 25

⁶⁷ Ibid p:26

Village Orientation

The village of Vailoa is located in the district of Faleata East on the central north coast of Upolu, about two miles from Apia. Because of its close proximity to the town of Apia, most of its land is freehold and its lifestyle urban oriented. A bible study group had sprung up in the late 1970s under the guidance of Max Rasmussen, a Samoan of mixed ancestry and age 70 years in 2000. His classes attracted a sizeable following, most were youth mainly from rural villages including Saipipi and Falealupo, both located in Savai'i. When the villagers returned home, many went with the intention of continuing their classes. In Saipipi, the introduction of the Bible classes was initially tolerated by the village elders on the assumption that it was another source of spiritual instruction. As the classes grew, its popularity began to challenge village sanctioned churches. Their pastors felt threatened by the loss of potential income during the regular village offering (*alofa*) and, under pressure from them, divisions began to emerge within the village.

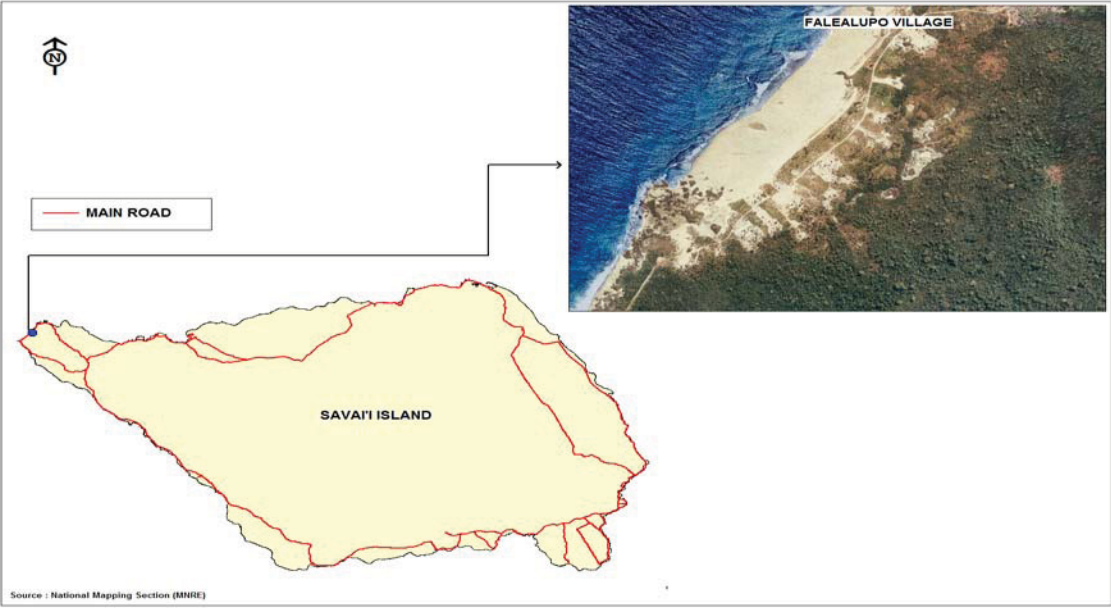
According to Tuimaleali'ifano (1997:309):

Samoan elders and titleholders are complaining that the new generation is not listening to them; they are not learning their Samoan language nor attending their church (the major institution reinforcing *fa'a Samoa* values) nor sharing their earnings and becoming interested in things *fa'a Samoa*. In this show of concern, they are saying that the very fabric of *fa'a Samoa* is undermined by independent thinking Samoans doing things in their own way and time. They no longer turn to their elders for the right to think and decide. They are listening and talking to others and their decisions are based on diverse sources of readily available authorities, sources subjected to the critical method of error elimination.

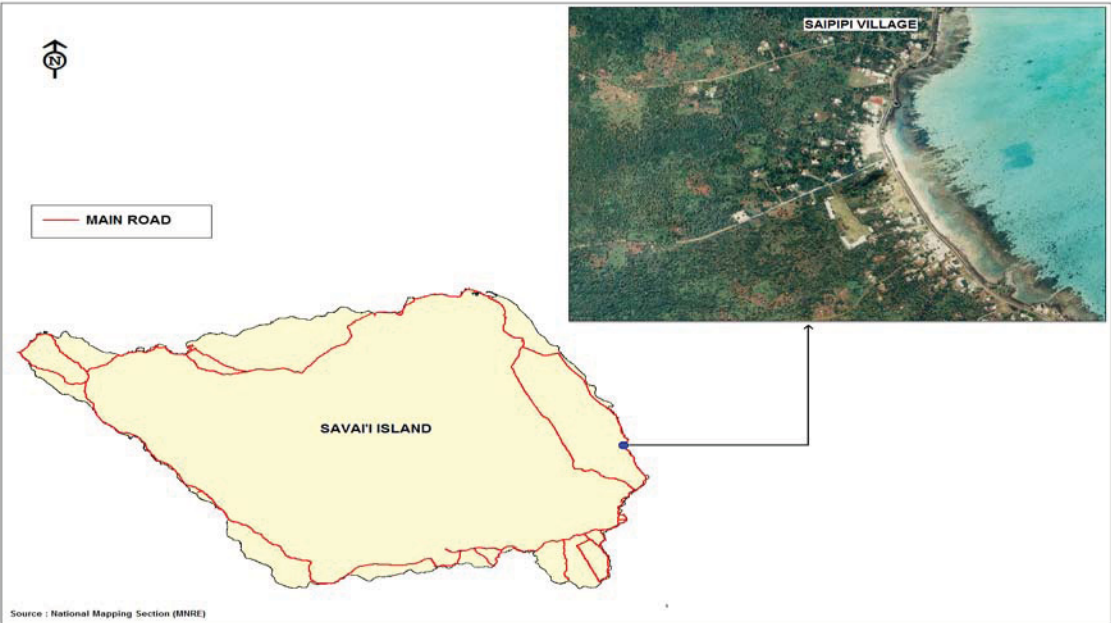
Although Christianity is favored constitutionally, it is not a state religion. There are no requirements for recognition of a religious group or for licenses or registration.

Map 2: Savaii: Location of Bible Classes at Saipipi and Falealupo

Map 2.1: Falealupo village



Map 2.2: Saipipi village



Case Study 1: Religious Freedom at Saipipi, Savaii

The village of Saipipi is situated in the district of Fa'asaleleaga No 3, Southeastern Savaii. Its population in 2011 was approximately 708 people. The male population was approximately 373 and females numbered about 335. There were approximately 88 households with an average of eight 8 persons per household.⁶⁹ In 2014, the number of *matai* was approximately 296. The number of male *matai* was 276 and females, 20.⁷⁰

Before the Bible class was set up in 1984, there were three (3) denominations in Saipipi, the Congregational Christian Church of Samoa (CCCS), the Mormon Church or the Latter Day Saints (LDS) and the Seventh Day Adventists (SDA). Leading the Bible class was Mau Sefo, Osasa, Su'a Falesui Faatafa and seven (7) *matai* titleholders. The group's membership was twenty (20). The village council initially did not intervene as they saw the Bible class as something spiritually good and useful to the villagers. It used to meet every Monday and Tuesday at the home of Su'a Falesui Faatafa, a senior *matai* of the village. In 1987, the village people who attended the Bible class increased to about one hundred and seventy (170) people with some came from the neighboring villages. The increase came at the expense of the sanctioned churches and this became a matter of great concern naturally to the local pastors and village council.

In 1989 the village council noted that the Bible class was conducting services such as *pesepelega* (song of praise), *fono tatalo* (prayer meetings) and *fa'amanatuga* (Holy Communion). It soon became apparent that the Bible class was becoming a source of some tension between parents and their children. Some members of the Bible class had ceased to offer *tautua* (services) to their *aiga* and the three (3) sanctioned village churches. They were also not participating in village council activities, which are obligatory.

On 26 November 1993 the village council of Saipipi published a *fa'asalalauga* (notice) in the *Savali* (Government newspaper) prohibiting any new church in the local polity. The only

⁶⁹ Census gathered from Samoa Department of Statistics 2011.

⁷⁰ See the Department of Land and Titles Court, Annual Report 1994 – 2014

denominations permitted in Saipipi were the *Ekalesia Fa'apotopotoga Kerisiano i Samoa* (EFKS) or Congregational Christian Church of Samoa (CCCS), the Mormon Church or Latter Day Saints (LDS) and the Seventh Day Adventist Church (SDA). The belief of the village council was that these churches were sufficient for the purpose of worship in the village. The newly introduced Bible class would create further tensions among the different churches. Furthermore, the village council noted that any person who does not worship under the three sanctioned denominations should relocate to another village. Any intention to introduce a new church in the village should apply to the village council. Consequently, the Bible class objected to the village council's public notification. They argued it violated the fundamental right as enshrined in the Constitution and decided to seek redress in the court, the Land and Titles court.

In 1995 the village council lodged a petition to the court about their announcement - *fa'asalalauga*. Firstly, they sought to confirm - *fa'amaonia* their public notification published in the Government newspaper issue of 26 November 1993 and secondly to dissolve the activities of the Bible class in Saipipi. The *fa'amasino Samoa* reached their decision by examination of *fa'amatalaga tuufofoga* (testimonies), *tala tusia* (written statements) and *molimau tauto* (sworn evidence) presented by each party.

Views of the Village Council on the Constitution

In their submission the village council interpreted the Constitution in terms of culture and Christianity (*O le fa'avae o Samoa e va'ava'alua le fa'a - Kerisiano ma le aganu'u*), meaning the constitution is a blend of the authority of the village council and Christianity. They justified this in biblical terms,

Everyone must obey the state authorities because no authority exists without God's permission, and the existing authorities have been put there by God. Whoever opposes the existing authority opposes what God has ordered; and everyone who does so will bring Judgment on himself. For Rulers are not to be feared by those who do well but by those who do evil. Would you like to be

unafraid of the man in authority? Then do what is good and he will praise him
(Roman 13: 1-3).

The Bible class spokesperson, Mau Sefo argued that the Bible class had not been interrupted by the council during eleven (11) years of its establishment in Saipipi. Mau Sefo explained that some of them were rendering *tautua* (services) to the village and some were not because they are *faate'a ma le nu'u* (banished from the village). In accordance with the freedom of religion, the Bible class should be continuing because they are *tagata o le eleele* (people of the land) and they have a right to worship in accordance with the constitution.

On the other hand, the village council argued that the Bible class began with a *fono tatalo*, followed by *pesepesega*. Later *fa'amanatuga* was added. It had evolved from a Bible class into a church. The village council observed that the Bible class had become a major influence on the youth and caused tension amongst members of other churches. Additionally, the village recognized that the Bible class was challenging and undermining the *pule fa'amamalu* (protective/over-riding) authority of the council to administer the welfare of the village.

After the examination, the Court confirmed the legality of the declaration by the village council of 26 November 1993. Furthermore, the court upheld the village council decision to limit the number of churches and to prohibit the plaintiffs from conducting Bible classes and church services in Saipipi. In effect, the Bible class was evicted from the village.⁷¹

Court of Appeal

On the 8th of September 1995, the Bible class appealed the decision on the basis that the decision was inconsistent with the right and freedom of religion as stipulated under Article 11 of the Constitution which states:

Every person has the right to freedom of thought, conscience and religion. This right includes freedom to change his/her religion or belief and freedom either alone or in community with others and in public or private, to manifest and propagate his religion or belief in worship, teaching and observance

(Constitution of the Independent State of Samoa 1960:13).

⁷¹ See Appendix B.1, Land and Titles Court decision 14 September 1995.

On 3 May 1996 the Court of Appeal declined the Bible class's application to continue their services in the village and upheld the decision of the Land and Titles Court dated 14 September 1995.⁷² The Court of Appeal argued that in any country there are customs and usages for people to abide by. Likewise, in Samoa there is a strong and close relationship between the *lotu* (church) and the *aganu'u* and *agaifanua*. The Court observed that the village council was not prohibiting the Bible class from conducting the Bible study classes. When the Bible class began to function as an actual church, the council wanted the Bible class to relocate somewhere else. Moreover, the land on which the Bible class and the church were situated is customary land under the *pule fa'amalumu* (overriding authority) of the village council. Hence, the Court's overall view about the relationship between culture and church is for the council to govern in accordance to Christian principles in the local polity.

Article 11 clause (1) of the Constitution provides for the right to a freedom of religion, but clause (2) of article 11, allows the Government to implement any law to govern and regulate the exercise of this right to freedom of religion for a peaceful and harmonious existence of the general population. Clause (2) of Article 11 was used by the Court of Appeal to restrict the appeal application by the Bible class that:

Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the public order, health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practice their religion without the unsolicited interference of members of other religion.

(Constitution of the Independent Sate of Samoa 1960:13).

The Land Titles Court Appeal can be appealed to Supreme Court.

Not being satisfied with the decision the plaintiffs took their case to the Supreme Court. They argued that the Court's decision (14 September, 1995) and Court of Appeal (3 May 1996) violated their right concerning religious instruction. They contended that the council did not

⁷² See Appendix B.2, Court of Appeal decision 3 May 1996.

have the power or authority to restrict freedom of worship and religious instruction. The Supreme Court found that the Land and Titles Court and the village council did not have the authority to make an order restricting religious worship in the village and that the plaintiffs' fundamental right to freedom of religion had been violated in making this decision. They also found that these rights would be infringed if the village council was allowed to restrict the number of churches in a village or if villagers had to seek permission to start a new church. The court also rejected the argument made by the Attorney General that the restriction of freedom of worship in this case should be allowed in the interest of the public order in accordance with the Land and Titles Act 1981 and Village *Fono* Act 1990. The Supreme Court has adequate powers to enforce the rights conferred and also secure the enjoyment of fundamental rights.⁷³

Case Study 2: Religious Freedom at Falealupo, Savaii

The Bible classes found a ready reception elsewhere. The village of Falealupo is located in Northwestern Savai'i. According to oral tradition, Falealupo was believed to be the gateway of gods' spirits (*Aitu/Fafa o Sauali'i*) and the last village to see the end of each day. In 2011, the population of Falealupo was 1097. The male population was about 577 and females were 520. The number of households in Falealupo was 256 with an average of 7 persons per household.⁷⁴ In 2014, the village council comprised 722 *matai*, with 696 males and 26 females.⁷⁵

Before the Bible class was established in August, 24th 1980 in Falealupo, there were four (4) village sanctioned denominations. The Congregational Christian Church of Samoa, the Roman Catholic, the Seventh Day Adventist Church and the Latter Day Saints.

In 1980, 13th of September, four non-*matai* of Falealupo (Nauma Seumanutafa, Peni Pouli, Fagaea and Tamasone Mao Sua) sought the consent of the village council to hold Bible classes in the village. The village council agreed on the condition that it was only for Bible

⁷³ See *Sefo v Attorney General* [2000] WSSC 18 (12th July 2000) in the Supreme Court of Samoa.

⁷⁴ Census gathered from Samoa Department of Statistics 2011.

⁷⁵ See the Department of Land and Titles Annual Reports 1994 –2014..

study classes and on Sunday, each member of the Bible class should attend his/her church in the village. Later on, about nine (9) *matai* joined the Bible class. In 1987, the council discovered that the Bible classes had begun to organize *tapuiga lotu* (actual church services). They were advised to stop the Bible classes. One of the men's father advised his son to stop attending the Bible class in accordance with the village council decision. In response, the son disowned his father and the father took the matter to the village council. Furthermore, the Bible class members had started to ignore the *vavao a le nu'u* (village curfew) and *lotu afiafi* (evening services). Instead of banishment because of its disruptive nature to the village, the council petitioned the court to remove the Bible class from Falealupo. After the examination, the court confirmed the village council's petition and ordered the Bible class to leave Falealupo within six months starting from the date of its decision, the 26th of July, 1987.⁷⁶

The court's decision was not implemented however because before the six months deadline had lapsed, the Bible class presented an *ifoga* (public apology) to the council. At the same time, Falealupo held a *lotu o le fa'aleleiga* (reconciliation service) to reconcile differences within the village council. Following the reconciliation, the Bible class assumed that the council had allowed their Bible class and church services to resume from Monday until Sunday. It was later revealed that the view of the village council was that the Bible class could conduct their classes on weekdays and on Sundays; each member should attend the village sanctioned church.⁷⁷

Some 13 years after the reconciliation, the council discovered that the Bible class had still objected to their rule. The Bible class continued to conduct church services and members did not render *tautua* to the family and village. As a result, the village council returned to the court (7 September 2000) seeking the removal of certain *matai* and their children plus the dismantling of the house used for the Bible classes. In addition, the village council issued a public notice over the national radio and in the government newspaper *Savali* prohibiting any new religious beliefs and church in Falealupo. Furthermore, the council claimed, the Bible

⁷⁶ See Appendix B.3, Land and Titles Court decision.

⁷⁷ See Bible class written submission, ALC 4140 P3 and ALC 4140 P5.

class had failed to comply with the decisions of the court on July 1987 and 23 March 2000 prohibiting the Bible class from operating in Falealupo.

The village council claimed that the *pule* of the land in the village is vested under the authority of the council. The *matai* is the *pule* of the family land but the council is the *pule fa'amalumalu* over the village land. Therefore, the village council's authority is stronger than the *pule* of the family land. To this extent, the village council authorized the establishment of the house for the Bible class. This authority could also be invoked to dismantle the Bible class house.

The Bible class argued that the *matai* and non *matai* in the Bible class are also members of the village council and the *taulele'a* of Falealupo. The *aiga potopoto* also chose them to look after their family. They clarified that they were born in Falealupo, a place where God appointed them to live. Therefore they have the *aia* (rights) to live in the village as enshrined in the constitution. Thus, there is no right of the other *matai* to remove another *matai* from the village. To remove a *matai* from a village is when he/she misbehaved and disobeyed the village authority.

View of the Court

The court reflects that '*Samoa o le atunu'u tofi*' literally means Samoa is politically appointed to rule by *matai* or consent of the *matai* rule the day. The church is under the umbrella of the dignified rule of the village council. The Samoan saying goes *e le taumasina se tasi ma le finagalo o Ali'i ma Faipule* (there is no person in the village who could reject the dignified rule of the village council). Furthermore, the court emphasizes the *fa'alupega* (set of ceremonial greetings) of Falealupo, which charts village hierarchy:

Auva'a ma le Aiga, Ma'opu o Nafanua

-Auva'a and the Maopu the
family of Nafanua
(the legendary war goddess)

Le matua o Lamositele	-Lamositele the elder
Le To'afa	-The four orators
Fetalaiga ia Sililaei ma le Tapuaiga	-Sililalei the speaker and the group of orators known as the Tapuaiga

Under village hierarchy, the senior village *ali'i* titles are Auva'a and Lamositele. Of the nine (9) Lamositele titleholders, only one holder attended the Bible class while eight (8) co-holders of the title Lamositele remained with the council. Approximately nine (9) *matai* were in the Bible class while there were one hundred and forty-one (141) *matai* with the council. The majority of *matai* were in the council and strongly opposed the Bible class.

The Bible class had based their argument on the freedom of religion. The court observed that their freedom is bounded under the authority of the council. Hence, the authority of the council takes precedence over the constitution. The freedom of Apia is not found in the village, because *o le fanua ma lona tapuafanua*, each village has its own customary land with its taboo. Moreover, the Bible class argued that they have the same rights on the land of Falealupo. However the village council observed that members of the Bible class disobeyed the council. The village council supported their argument by quoting from the Bible '*ia e ava i lou tama ma lou tina ina ia faalevavevaina ai ou aso*' (respect your father and mother and you will live long...(Exodus 20: 12).

After the investigation, the court accepted the *pule* of the village council to consider any new religion in Falealupo. The court decided that the Bible class should be evicted from Falealupo within one month. The Bible class appealed to the Land and Titles Court of Appeal to withdraw the Land and Titles Court decision because it violates the right of religion as enshrined in the Constitution. The Land and Titles court decision was upheld by the Court of

Appeal (LTC).⁷⁷ The Bible class took their case to the Supreme Court and on April 24 2001, the Supreme Court overturned the Land and Titles Court decision. The Supreme Court argued that all laws, whether statutory or customary, are subject to the individual rights provided for in the Constitution.

Impact

Before the Supreme Court decision of 24 April 2001, Tuasivi District Court sentenced forty two (42) members of the Bible class of Falealupo to four months imprisonment and another twelve (12) to two months for refusing to obey the court's decision (July 1987, March and September 2000) to abandon the Bible class. Most of them were youths and women who were the breadwinners of the *aiga* and the *nu'u*. Their sentence to prison is what is known as 'prisoners of conscience'.⁷⁸ Their imprisonment led to wide public debate about constitutional guarantees of freedom of religion

Analysis

Firstly, the Bible classes at Saipipi and Falealupo were established before the implementation of the Village *Fono* Act 1990. The village councils of both villages had initially accepted the Bible class. When Lemoa Silivelio was asked for the reason of their evacuation, he said, the pastors of the existing churches were jealous because the number of people in the Bible class had increased. Most of these people were moving away from the existing churches and the ministers sought help from the village council. Lemoa also argued that the Holy Communion, weddings and funeral services are properties of the church but not the village council.

⁷⁷ See Appendix B.4, Land and Titles Court decision 7 September, 2000 and Appendix B.5, Court of Appeal Decision 28 February 2001. The decision of September 7, 2000 was appealed on 28 February 2001 and was rejected on the grounds that it would affect the previous decision of the Land and Titles Court. See Appendix B.6, Supreme Court's Decision – 23 April, 2003 which overturned the Court of Appeal's Decision of the 28 February 2001.

⁷⁸ See the Amnesty International Report, 2001. Covering events from January to December about Samoa.

Secondly, the Bible class at Saipipi was founded in 1984 and the village regulations were published on 26 November 1993. The Bible class at Falealupo was started in 1980 and the village regulations were published on 28 February 1999. The Bible classes were introduced in both villages before the village bylaws were published and subsequently confirmed by the court. It seems, both village councils had intended to publish their rules in order to remove the Bible classes. Hence, the court perhaps should realize that at the time that the *tulafono o le nu'u* or village regulations were published, both Bible classes were already introduced in Saipipi and Falealupo.

Moreover, it seems *ua tautuaupega le tapu a le nu'u ae ua fa'atu le aoga Tusi Paia* meaning the village by-laws have been published too late because the Bible class was already operating in the village. The point is, once the village rules are established, the council must take it to the court to confirm it before it can be implemented. This must be done in order to ease the tension within the village council. It is the hope that the village council and the court publish and provide villages with written laws concerning village attitudes on religious freedom in each village.

Thirdly, the Land and Titles Judges's decision was based on the majority opinion of the village council. For instance, the court decision reveals that of the nine (9) Lamositele titleholders, only one holder attended the Bible class while eight (8) remained with the council. The other paramount title Auva'a was vacant at the time of the dispute. Approximately nine (9) *matai* supported the Bible class and one hundred and forty-one (141) *matai* supported the council. It seems the court decision was influenced by this fact. Because the majority of *matai* was on the side of the village council and the court decided in favour of the village council.

Relationship between Fundamental Rights and Custom and Tradition in Samoa

Table 8: CONSTITUTION OF INDEPENDENT STATE OF SAMOA

- Right to life and right to personal liberty.
- Freedom from inhumane treatment.
- Freedom from forced labour and right to a fair trial.
- Right concerning criminal law.
- Freedom of religion.
- Rights concerning religious instruction.
- Rights regarding freedom of speech, assembly, association movement and residence.
- Rights regarding property.
- Freedom from discriminatory legislation.

Figure 2: The Individual is bounded under Village Institutions

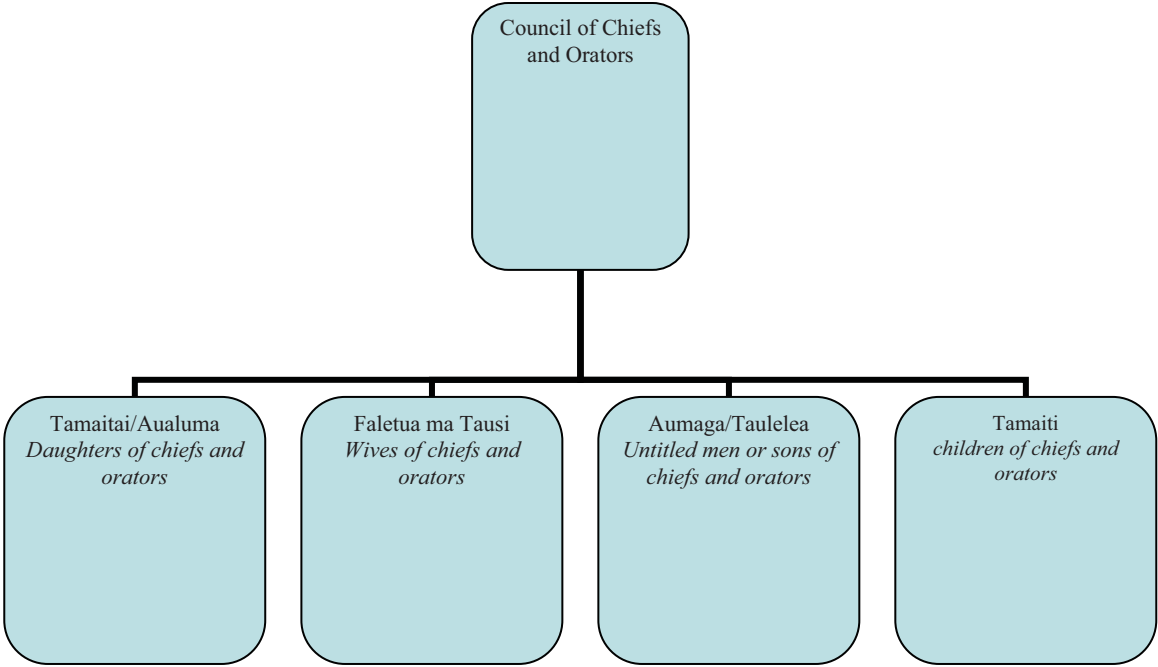


Table 8 and Figure 2 reflect the relationship fundamental and communal rights in Samoa, the *pulega fa'amatai* and the court of law that identify human rights in its Bill of Rights. Furthermore, the diagrams show the different structures of indigenous or local governance and introduced system of democratic government in Samoa. Hence, the court of law recognizes the *pulega fa'amatai* in villages and this has been shown by the Village *Fono* Act 1990 which is "AN ACT to validate and empower the exercise of power and authority by Village *Fono* in accordance with the custom and usage of their villages and to confirm or grant certain powers; and to provide for incidental matters", (Village *Fono* Act, 1990).

On the other hand, the traditional structure recognizes various groups in the village as shown by the diagram above such as the women's group and untitled men. These groups follow the formation of the council of chiefs in terms of families' *matai* titles as well as their roles within the community. To some extent, this indigenous political system is bounded by the *va-tapuia* within the Samoan sociopolitical structure under which each individual is bounded. Under the *fa'amatai* system, Gerth and Mills (1953: 95) asserts that the 'individual is oriented outward to a permanent group or significant others.' To some extent, the *fa'amatai* society is kin and group-oriented. As Gardner (1965:72) states, 'the concept of value orientation to the Samoans was group oriented toward lineality and collaterality rather than individuality.' Resources are pooled at both extended family and village level. Moreover, the individual's duty in the community is to serve the group. Keene (1978: 321) observes that 'the trend of group ethic and social control in Samoa is that each individual maintains good relations and strives for the approval of others through conformity and orientation toward authority.'

In Contemporary Samoa, the *pule* of the *matai* in the *aiga* and the *pule fa'amalumalu* of the village council to manage the daily welfare of the community is undermined by the notion of human rights. To some extent, individual rights - *aia tatau* is not only limited to single interest but they are very specific. On the one hand, the individual tends to think of herself/himself more individually rather than being part of a cohesive community.

Tuimaleali'ifano states that:

Individualism undermines the very foundation of communal values, of communal *fa'a Samoa* the basis of *matai* power. This independent frame of mind has evolved most noticeably with the movement of Samoans from rural villages into urban Apia, New Zealand, Australia, USA and elsewhere. This conditioning is tempered by the political culture, usually a Western liberal philosophy of their new homes.

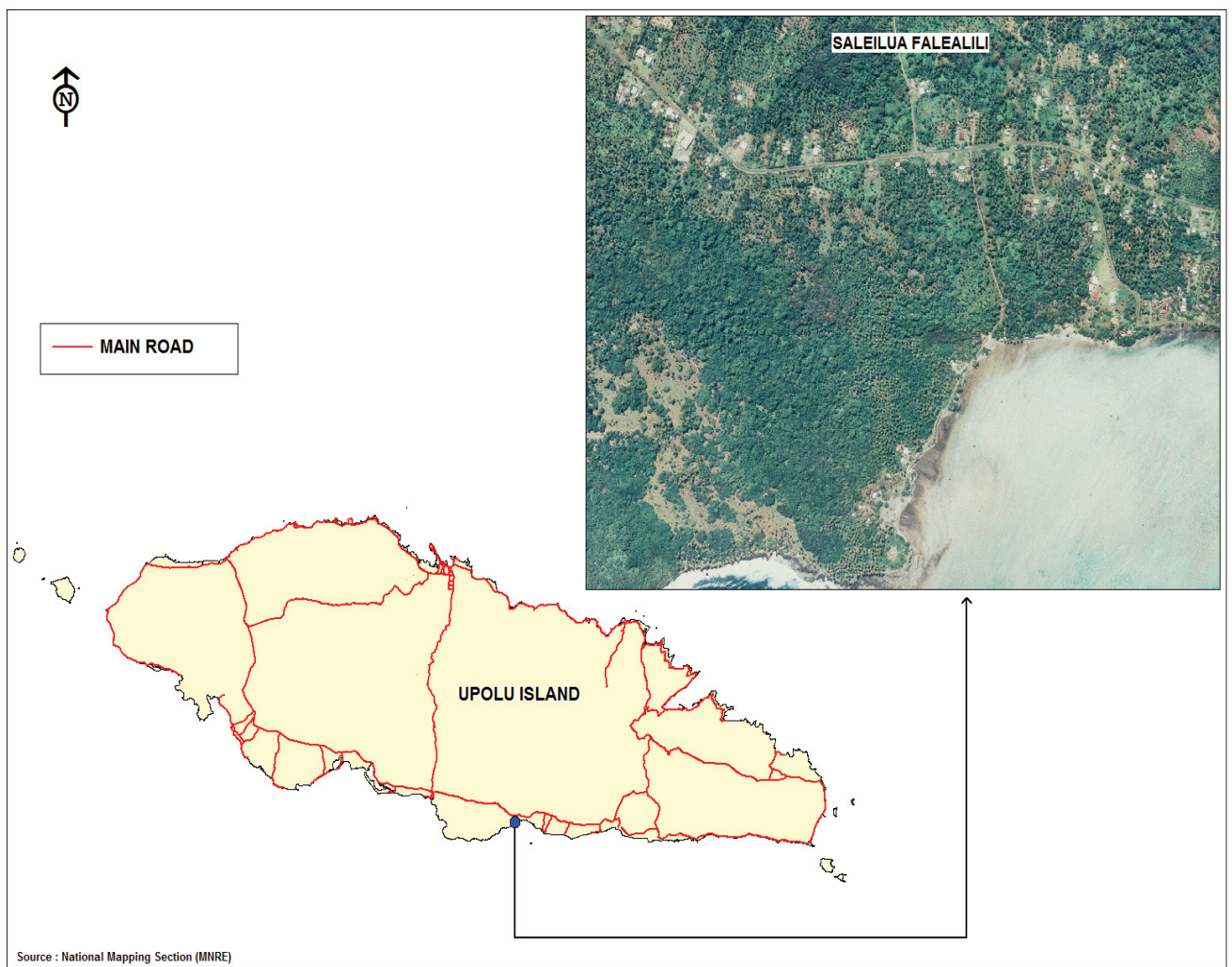
The Land and Titles Court's decisions of the above case studies in favour of the village councils appear to be an attempt to maintain the old order. The village councils of both villages attempt to settle the matter by using their customary authority. When they fail they put the matter to the Court for settlement. The Land and Titles Court's decision endorsed *aganu'u ma agai'fanua* (custom and usage) and also supported the councils of each village. In response the offended party (Bible class) invoked their rights as individuals under the Constitution. One of the case studies appealed against the Court's decision on the basis of fundamental rights, and the Supreme Court upheld it. Both case studies expose an on going struggle in Samoan society and mainline churches because of the ideological disparity between *aganu'u* and *tulafono fa'a-papalagi*. The confusion is a major cause of social and economic disruptions in virtually every village and family, in Samoa and overseas. This misfit between conflicting ideologies is discussed further in the next chapter on the removal of a *matai* and his sisters from customary family land situated within the village of Saleilua, Falealili.

CHAPTER 5

Domestic Dispute in Saleilua, Banishment by Village Council and Role of the Court

This chapter discusses a family domestic dispute, banishments of the family by the village council and the role of the court in settling the issue. The tension can be discussed within the principles of the relationship between Samoan custom and usage or local village practices – *aganu'u ma agaifanua*. The case study reveals the impact of the court's decision on the village council's decision to evict a *matai* and his squabbling sisters from the village of Saleilua in the district of Falealili.

Map 3: Upolu: Location of Saleilua Village



Background

The village of Saleilua is located in the district of Falealili in the Southeastern side of Upolu. In 2011, its population was approximately 685 with males 347 and females 338. The number of households was 89 with an average of eight 8 persons per household.⁷⁹ The number of *matai* totaled 145, comprising 134 male and 11 females.⁸⁰

Cause of the Dispute

The root of the tension stems from an earlier court dispute over a major village title called Fanene. In 1996, the court decided to split the title and appointed as co-holders Soti Kavana and Anitele'a. Fanene Anitele'a and his sisters objected to the appointment of Fanene Soti Kavana because *e le'o se sulii* (he was not an heir). They appealed but the court of appeal upheld the lower court's decision, and from there, the seed of family discord was sown. The appointment of Fanene Anitele'a and Fanene Kavana to the Fanene title intensified the rivalry that had been festering within the family for some time. Anitele'a inherited the title through his mother Nu'umoe and Kavana inherited the title through his service to the Sa Fanene family. When one Fanene made a decision in favour of his family members, the other Fanene lodged an objection either in the village council or the Land and Titles Court. Nu'umoe's husband, Duffy - Tevesi, was bestowed the title by her family, and became known as Fanene Duffy. The bestowal of the family title on a foreign male marrying (*faiava*) into the family is common, though the ultimate connection to the title and property is through the woman.

According to Fanene Anitele'a's sister, Saoletiti Carol Duffy,⁸¹ her late mother, Nu'umoe Fanene Duffy, challenged most of the court's decisions on customary land under the Fanene title. Fanene Kavana and his ancestors did not participate in those court disputes because they were not blood descendants. When he was bestowed the Fanene title, it was alleged that his

⁷⁹ Census gathered from Samoa, Department of Statistics 2011.

⁸⁰ See Department of Land and Titles Court, Annual Reports 1994-2014.

⁸¹ The name Duffy is known in Samoan as Tevesi.

manner became overbearing and threatened the peace within the extended family – *aiga potopoto*. Fanene Anitele’a resides at Taufusi and his sisters in the village. When a question arises over customary land, Fanene Kavana and Fanene Anitele’a’s sisters invariably disagree.

The basis of the sisters’ argument is that since they are the true heirs of the title, they have the authority or *pule* over the family customary land. In this case, when the two family *matai* titleholders cannot get on, their families cannot agree on anything and consequently virtually all productive activities come to a stop. Fanene Anitele’a and Fanene Kavana have different opinions on where and how each member of the family can work the land. When the matter is referred to the court they refer it back to the two Fanenes who refuse to meet. Invariably, the decision falls back to the court.

In 2001, one of Fanene Anitele’a’s sister, Sa’oletiti Carol established a groceries shop on land called Mulimauga, in Saleilua near the government road with the purpose of providing monetary support for the *matai* and the *aiga*, and other obligations. The shop was leased on a parcel of land (Mulimauga) with the approval of Fanene Anitele’a in according to leasing of customary land. In early 2004, Kose Fanene Tevesi and brother of Sa’oletiti Carol who had spent most of his life in Australia returned to Saleilua and stayed at his older sister’s (Leilani Fanene Duffy) house, where the shop was located. Kose looked after the shop as agreed to by Sa’oletiti Carol and other members of the family. After five weeks, Kose claimed himself as the sole authority and ownership of the shop with the support of other *matai* of the village, and stopped his sisters from entering the shop.

Fanene Anitele’a, Sa’oletiti Carol and other siblings sought a court order from the Supreme Court to reclaim the goods (foodstuffs) that were sold by Kose. On Saturday 14 February 2004, Sa’oletiti Carol and three policemen went to Saleilua to take the court order to Kose Fanene. Instead of his brother, Fanene Anitele’a, Kose enlisted the help of their family rival, Fanene Kavana. Fanene Kavana was the *pulenu’u* or village mayor in the village council. The village council and the *taulele’a* (non *matai*) appeared in front of the shop and delivered the village council’s decision to Kose’s sisters that:

The village has decided as per instructions from Fanene Kavana (village mayor), that Fanene Anitele'a, his sisters and all members of his immediate family are hereby banished from Saleilua with the exception of Kose and Sione (brothers) who shall continue to remain in the village. If Kose leaves the house and if the goods and properties are taken from the shop, the village will burn the house. If by 4.00 pm the sisters and their children are still in the village, they will be burned too.

(Written Statement – Fanene Anitele'a's sisters – LC 10604).

The police officers advised the village council that they must not interfere with their duty in accordance with the court order. They handed the Court order to Kose and Asuao Fa'amoana. In accordance with the village decision Fanene Anitele'a and his sisters evacuated the village before 4.00pm. After 4.00pm, the village torched the family house, including a vehicle and other properties at *Lalofau*, the *tulaga maota* (official residential site) of Fanene title. The house where the shop was located at Mulimauga remained intact.

Basis of village council decision

The village council's decision to burn down the house was based on a history of internal family conflicts. They claimed that there was constant conflict between the sisters, the *matai* and their brothers, Sione and Kose. In one of the *asiasiga fa'a-le-nu'u* (village inspection) conducted to inspect the status of family lands and cultivation, they claimed that the ladies constantly rejected the village committee's inspection. The ladies claiming that *e le'o fainu'u* (they are not part of the village affairs) and thus they are not obligated to village ruling. Moreover, the village council claimed that on one particular Sunday, a party was held and firearms were fired in which some bullets fell on the pastor's house. They argued that they did not even obey their family *matai*, (Fanene Kavana Soti and Fanene Anitele'a). They quarreled with other families over land boundaries and whenever the village council made a ruling, they had a habit of objecting. On Saturday 14 February 2004 the village council finally decided to evict them.

At the Courthouse

At the hearing, Fanene Anitele'a and his sisters stated that the tension was a domestic dispute and it was not against the village council. Fanene Anitele'a and his sisters petitioned the court that the village council's decision was not right, because they did not do anything wrong against the village. They should return to the village and they should be compensated to the sum of T\$250,000 for the destruction of their home and properties. The village council argued that they did not banish Fanene Anitele'a or *fa'atulaiese* from the village. It was only his sisters who caused the disputes and violated the peace in their *aiga* and the *nu'u*. They claimed that they did not order to burn their house, the vehicle and their properties.⁸²

The court deliberated on the two main issues of the case, firstly, the sisters' desire to return to Saleilua and, secondly, the council's petition to confirm the removal of Fanene Anitele'a and his sisters. The dispute was between brothers and sisters and it should have been settled by the *matai* of the family. Later, the council got involved in the family dispute. The court commented on the behavior of the ladies in the village and in their family. No one can live individually in the village. The village is lived communally. If anyone wants to live individually and free from his/her village life, it's better for him/her to buy a piece of freehold land. Kose Fanene revealed in the court that he forgave his sisters and would take care of them. Sa'oletiti Carol also conveyed to the court that they would perform what is customary appropriate with their humble hearts if they returned to Saleilua. Even though, some of the villagers were dissatisfied with the ladies reaction, there appeared to be love and forgiveness towards the *matai* of the village. As the saying goes *e le po pea se nu'u* meaning, no village lives in the dark forever.

The Land and Titles Court Decision

On 2 April 2004 the court decided that Fanene Anitele'a and his sisters could return to Saleilua. They should go back to the village under the condition of fulfilling customary offerings such as providing food, money, *tapa* cloths and fine mats to the village council, known as *fa'a a'e ma le nu'u* (reinstatement). The court advised the village council to

⁸² See Appendix C.1, Fanene Anitele'a petition and Appendix C.2, petition by *Ali'i* and *Faipule* of Saleilua.

reinstate Fanene Anitele'a and his sisters. The court also advised both Fanene Anitele'a and Fanene Kavana to reconcile for peace in the family and the village.⁸³ Fanene Anitele'a's family gives fine mats and tapas to the village whilst the village has to pay \$T250, 000 for the destruction of Fanene Anitele'a and his sisters' home and properties.

Analysis

The house that was burned was located at Lalofau, the tulaga maota (official residential site) of the Fanene title. Neither Fanene Kavana nor Fanene Anitele'a lives there. The people who live there are Fanene Anitele'a's sisters and their children. The fact that the ladies live on the residential site of the title plays an important part in the tension between Fanene Kavana and Fanene Anitele'a. When tensions flare, it is difficult for a *matai* to settle his/her *aiga*'s grievances when his/her authority has been weakened and questioned by his/her own *aiga*. The only option is to put the matter to the village council even if their decisions can often appear inconsistent.

When the size of *aiga* increases numerically, the probability of disputes rises in proportion. This is particularly so with the issue of succession when the family title is vacant. To solve the differences between the two Fanene and their *aiga*, the splitting of the title into *itupaepae* (branches), or *foaifale/fuaifale* (sub branches) is an acceptable option. The title is split in two with each having their own branch name, and each side given the right to make their own appointment without the need to consult the other side.

Vaai (1996:53-54) in this regard observes that:

Other traditional methods of resolving title succession disagreement are by segmentation and splitting of titles. Segmentation may result not only from pressure on the agnatic line from the uterines but from pressure within the agnatic line from other brothers who also want to succeed to title. The segmentation and splitting of titles divided into *itupaepae* if the intention is to create separate and independent units or *fuaifale* if the intention is to have multiple holders of title that remain under authority of the original unit. The

⁸³ See Appendix C.3, decision of the Land and Titles Court 2 April 2004.

adoption of either method needs the approval of family heirs under its constitutive authority.

In the case of the Fanene family, this view is difficult because one principal *matai* is the *suli* (true heir) and the other is the *tamafai* (adopted child). Difficulties may also arise because of the struggle to obtain absolute power in order to gain wealth and the respect from the *aiga*. The problematical issue is that Fanene Kavana and Fanene Anitele'a were appointed by the Land and Titles Court decision simultaneously. Although, the two principal *matai* are different in age, their status as the *sa'o* (principal *matai*) of the *aiga* remains equal. Both principal *matai* have the same authority over family titles and the customary land. No one's authority is subject to the other. Unless the two appointees were an uncle and nephew, or older and younger brother, or brother and sister, there is the opportunity for one to play the deference game based on gender, age and generation. When the court made no distinction between the two appointees as to who has prior right over the other, this scenario paved the way for a long power struggle that has plagued the family. In this case, the struggle for supremacy between the true and adopted heirs will be an unfortunate fact of life for the Sa Fanene family and the Saleilua village council.

Every village council is proud of their *agaifanua*, which contributes to their distinctive difference from other villages and districts. Many village councils refuse to take their disputes to the Court like the villages of Gataivai and Asau. They prefer the *tofa mamao* and *fa'autautaga loloto* of traditional justice of the village council to settle their dispute. The evidence of this, is reflected in the orators' formal speeches at the Land and Titles Court before the hearing, *tatou toe fo'i i fanua e teuteu ai upu a lo tatou nu'u* let us take the matter back to the village for discussion and reconciliation.⁸⁴

The custom and usage of the Act of 1981 as the basis of the decision has been left to the court to determine. The court was left to decide and in doing so, it did not take into account the differences between a blood and adopted descendant, who should live in the residential site of the title and who should take precedence when both attend important village occasions. The

⁸⁴ Exchange mutual dialogue between orators of the village and disputing parties before court hearing

Act is silent to clarify the roles and duties of titular *matai* and more importantly the position of true heirs and adopted descendant to the title of the family.

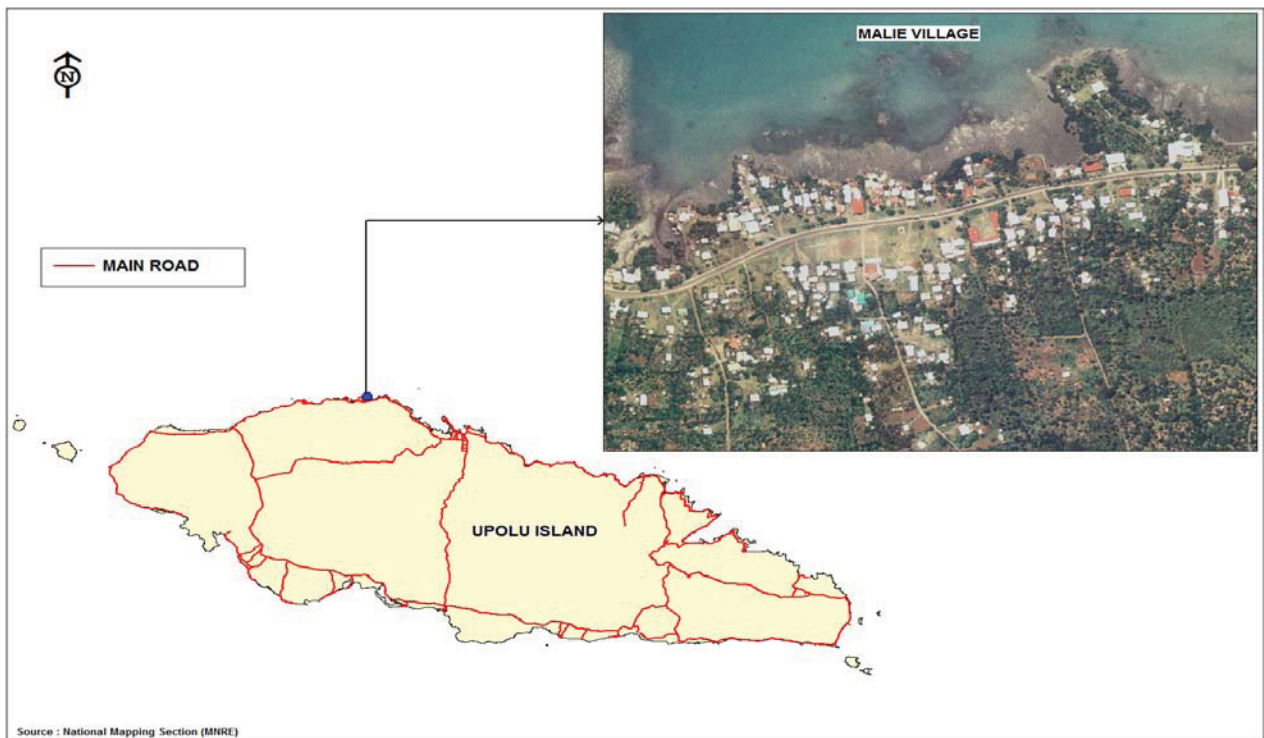
The danger is that the minority voice is likely to be snuffed out by the majority and no action is taken. The good relationship between the chiefly *matai* is often disrupted principally on the issue of *pule* (authority) or on whose *pule* is superior to the other. Who has the *pule fa'avae* (constitutive authority) and *pule fa'amalumalu* (umbrella/overriding authority)? This issue is addressed in the next chapter.

CHAPTER 6

Disputed Pule of the Toelupe Title of Malie Village

In the absence of definitions in the governing Act of what constitutes custom and usage in relation to family title and customary land, how is the court to interpret custom and usage? Given the diverse background of judges drawn from senior Samoan matai of varied background and experience, decisions, perhaps not too surprising, decisions can be drawn out and outcome varied. The following chapters illustrate the role of the court in determining custom and usage. It shows how custom undefined is a contested arena and subjected to manipulation by powerful players with power bases in customary title system and constitutional government. This dispute is over the *pule* or authority of a family *matai* title. The dispute was between two powerful men from the same village, one holding a *papa* or paramount *ali'i* title and the other a powerful *tulafale* orator title. In the absence of what constitute custom and usage, how does the court determine custom and usage in resolving disputes on family titles and customary land?

Map 4: Upolu - Location of Malie, Tuamasaga and Vaovai, Falealili



Background of Malie

The village of Malie is located at the North West of Upolu in the district of Sagaga Le Usoga. Its population in 2011 was approximately 2330. The number of males was 1202 and females, 1128. The number of households in Malie was 221 with an average of 8 people per household. There were approximately 496 *matai* in the village comprising 490 males and 6 females. The rest are *taulele'a* (untitled men or sons of *matai*), *aualuma/tamaita'i* (daughters of *matai*), *faletua ma tausī* (wives of the *matai*) and *tamaiti* (children). Many have migrated to other villages and overseas such as American Samoa (Tutuila), New Zealand and United States seeking better opportunities. However, they still contribute to their *aiga fa'avelave* (family obligations) such as *maliu* (funerals), *fa'aipoipoga* (wedding), and *saofa'i* (title installation) and court cases.

Malie is politically significant because it is one of the resident villages of the *papa* or paramount title, the Malietoa title. The title's power bases lie in the villages of Sapapali'i and Malie. Samoa's oral traditions describe how Tuna and Fata with the assistance of their sister's son Ulumasui drove the Tongans from Samoa. This event led to the creation of a new high title "Malietoa".⁸⁶ By 1200 A.D. the Tongans had become insufferable and a major victory to the Samoans led to the creation of the Malietoa title which was held by former Head of State (Malietoa Tanumafili II).

The Malietoa title is protected by the council of chiefs known as the '*Pou e fitu o le fale Malietoa*' - the seven posts of the house of Malietoa. The seven titles are Sauniaau, Toelupe, Leafa, Si'a, Maligi, Tulasunu'i and Leupolu. The village charter or *fa'alupega* which establishes the political authority of every village sets out the ranking of chiefs and orators of Malie. The *fa'alupega* defines the relationship between the *ali'i* and *tulafale*, their duties and their respective status which is reflected at the sitting position of every village council.

⁸⁶ Meleisea 1987:31 and Alailima 1994:250.

The Salutation (fa'alupega) of Malie is:

Afio o Sa Maualaivao	-Welcome the family of Maualaivao.
Le matua ia Fa'amausili	-Fa'amausili the elder.
Susu le Tapaaufa'asisina	-Salutation to the Tapaaufa'asisina.
Maliu mai Pou e fitu	-Welcome the seven posts of orators.
Ma le mamalu ia Auimatagi	-And the dignified group of orators of Auimatagi.

Malietoa Vainu'upo, also known as Malietoa Tavita, was the first *Tafa'ifa* of the Sa Malietoa family. He was considered the most influential *papa/tapaau* titleholder during the height of political rivalries in Samoa in the late 19th century. His star was on the rise when missionaries from the London Missionary Society (L.M.S) arrived in 1830 in Samoa. The salutation of 'o Malietoa *e fa'alogoa iai Samoa* means Samoa listens to Malietoa and is attributed to his reception and patronage of the London Missionary Society in 1830 – and thus the message of Christianity.

Brief genealogy connecting Malietoa Tanumafili II to Malietoa Tavita Vainu'upo.

Malietoa Fitiseanu married Palo (daughter of Memea – Sapapali'i) issued Malietoa Tavita Vainu'upo. Malietoa Tavita Vainu'upo married Aitualagi (daughter of Gatoloi- Iva) issued Malietoa Moli. Malietoa Moli married Fa'aalaitaua Fuatino (daughter of Su'apaia of Salelavalu) issued Malietoa Laupepa. Malietoa Laupepa married to Fa'aalaitaua issued Fa'amu Leuatoivao and Silivai (females) and Malietoa Tanumafili I (male). Malietoa Tanumafili I married to Lupeuluiva (daughter of Meleisea of Poutasi, Falealili) issued Malietoa Aki Tanumafili II, Savea Sione (males) and Tooa Salamasina (female). Malietoa Tanumafili II and Tupua Tamasee Meaole II became joint Head of States when Samoa became independence in 1962.

The Dispute between Malietoa Tanumafili II and Toelupe Vaito'a

Ever since the Malietoa title has been associated with national leadership, the titleholders have tended to live outside of their original power bases. Malietoa Tanumafili II and his immediate predecessors have lived in some customary land, in government quarters and purchased freehold property in and close to the capital, Apia. Many customary ceremonies such as installation of titles and conflict settlement discussions have taken at Malietoa's residence in Fa'atoia. The cause of the dispute stems from a disagreement between Malietoa Tanumafili II and Toelupe Vaito'a. The origin of the dispute can be traced to an installation of two titles⁸⁷ in Vaovai village in the district of Falealili in early 1997. One of the titles is used in Malie – Toelupe title in 1997. Malietoa Tanumafili II was persuaded to use the titles in Malie. The only holder of the Toelupe title was Toelupe Vaito'a. He was the most senior *matai* in the village and next to Malietoa was also the most senior in age. Without consulting Toelupe Vaito'a, Malietoa, Leafa Vitale and Maualaivao Neru conferred the title Toelupe on Joe Leafa, Lalolagi Haini, Siaki Hunt and Alao Maualaivao Neru. The conferring ceremony took place in July 1997. Before the ceremony, Malietoa's decision was formally conveyed as a *malelega*, or formal declaration to the Malie village council.

The tuua of the village council was Toelupe Vaito'a and most senior resident of Malie village.⁸⁷ He had been a titleholder since 1947. He was a former school teacher. He was eighty two (82) years old at the time, a retired judge of the Land and Titles Court and had gained considerable influence and experience in customary matters. He had served in the court for fifteen years before promotion to be deputy president from 1984 to 1991. He was the senior holder of the Toelupe title, a title which he alleged holds the *pule* or authority over the Seaga title. In addition, he was also steeped in traditions relating to titles, well versed in politics at the local and national level. Malietoa Tanumafili II was eighty four at the time and had been Malietoa for fifty four years since his installation in 1940. When Malietoa's declaration was conveyed, Toelupe objected. In Toelupe's view, he had expected Malietoa would have at least called him for consultation before finalizing his declaration. Toelupe's

⁸⁷ The titles that were conferred in Vaovai were Toelupe and Seaga. They were conferred to Leafa's siblings in 1996

⁸⁷ The most senior orator is referred to as the *tu'ua*.

claim was based on court decisions on 1978 and 1985 which stated that the *pule* over the title Seaga is vested in the title Toelupe.

Malietoa Tanumafili II's declaration was discussed at Malie village council at which Toelupe presided, and the outcome in effect was a rejection. When word reached Malietoa in Apia, the village began to split between the two men. Eventually, Malietoa's supporters notified Toelupe that he should leave the village. Given the national significance of the Malietoa title, there was potential of the dispute widening. In response, Toelupe sought the court's help and the court responded with a restraining letter to the village council curtailing further action until the matter had been heard by the court.

When the hearing began on February, 1998 the court considered a letter from Malietoa Tanumafili II of 23 July 1997. It was read out:

I am Malietoa Tanumafili II the *tama* (father) of Malie village. My foremost duty is to maintain the *fa'avae* (foundation) of the village as laid down by our forefathers in the past. This *fa'avae* (foundation) is to keep the peace and mutual respects amongst each *aiga* in Malie. However, some people of my village objected or showed *a'aitui* (disrespectful action) toward my *malelega* (formal declaration), which protects my village.

On 14 July 1997, Toelupe Vaito'a and Lupetuloa Kalati showed *uiga mataga* (disrespectful manner) to my *malelega*. This reveals their *fa'amaualuluga* (arrogance) against the *pule* of the Malietoa title and hence it is a *mea fou* (new thing) in my village. On 21 July 1997, the *fono* was held at Malie, Toelupe Vaito'a and Lupetuloa Kalati still showed *uiga mataga* against my *malelega*. They said, '*ua oona la'u malelega*' (my royal decree is bitter). In fact, these men set bad examples to Malie hence affecting the *fa'avae* o Malie and especially the *pule fa'amalumu* (overriding authority) of Malietoa title. Therefore, I am Malietoa Tanumafili II prays for a *poloaiga a le Fa'amasinoga* (court order) to return the Toelupe, Fa'amausili, Maualaivao titles from Vaito'a

and his family and to remove Vaito'a, Lupetuloa Kalati [and] their families from Vaopipi, Malie.⁸⁸

In August 1997, the court Registrar requested Toelupe Vaitoa and Lupetuloa Kalati⁸⁹ to submit formal responses to Malietoa's letter. On 1st September 1997, Lupetuloa Kalati wrote a written apology to Malietoa and withdrew support from Toelupe.⁹⁰

Toelupe stood his ground and on 2nd October 1997 submitted his formal response. In it, he claimed that the title Toelupe is vested in him and his family. He is the only titleholder of the Toelupe title in Malie and the *pule* of the title is vested in the *matai* titleholder and the *suli o le suafa* (heirs of the title).⁹¹ He alleged that the origin of the dispute can be traced to an installation in Vaovai Falealili of the titles Toelupe and Seaga. The matter came to a head when Malietoa was persuaded to introduce these titles in Malie. Furthermore, without consulting Toelupe, those that had been installed in Vaovai, Falealili were now preparing to confer these same titles on people in Malie.⁹² In his letter to the Registrar, Toelupe Vaito'a asked that the *pule* of the title Toelupe be settled in the Land and Titles Court. Toelupe's argument was that the *pule* of the title was vested in him and heirs of the title, and that Malietoa has no connection to the Toelupe title. For some obscure reason, the petitions were not published in accordance with the Land and Titles Act 1981.⁹³

On the 28th October 1997, Malietoa Tanumafili II submitted his *talosaga* (petition) to the court. He argued that the title Malietoa is the *pule* of the Toelupe title and the *to'afitu*.

⁸⁸ This was backed by a second letter to the court of 19 November 1997.

I am Malietoa Tanumafili II, the *tama* of Malie. I have the *pule fa'amalumalu* of Malie. This *pule fa'amalumalu* is exercised and looked after by the *pou e fitu o le fale Malietoa* (seven posts of the house of Malietoa). But Toelupe Vaito'a and his family object that *pule fa'amalumalu* over Malie. My willingness before the court is to remove the title Toelupe, title Fa'amausili, and title Maualaivao from Vaito'a and his *aiga*.

⁸⁹ A supporter of Toelupe Vaitoa.

⁹⁰ 'I apologise to your Highness Malietoa Tanumafili II about my misbehaviour against your *malelega*. I humbly accept every part of your *malelega*. Please forgive me.'

⁹¹ See Appendix D.1, Toelupe Vaito'a's petition against Malietoa Tanumafili II and his party.

⁹² Leafa Vitale and Maualaivao Neru conferred the title Toelupe on Joe Leafa, Lalolagi Haini, Siaki Hunt and Alaoa Maualaivao Neru.

⁹³ See Appendix D.2, Malietoa T. II's petition and D.3, the village council's petition against Toelupe Vaito'a and his party.

Malietoa did not deny the installation in Falealili nor his wish to install new titles in Malie. As the *pule fa'avae* (original/constitutive authority) of Malie, the court should allow the installation. Despite Toelupe's chairmanship of the village council, the council submitted a petition confirming Malietoa's petition and *pule* over Malie.

At the hearing, Toelupe argued that the dispute started when Leafa Vitale was bestowed the Seaga and Toelupe titles at Vaovai Falealili.⁹⁴ Leafa knew it was difficult for him to introduce himself as Toelupe to Malie because the titles were bestowed in Vaovai and thus belong to that village. He therefore convinced Malietoa to declare that they be used in Malie. On the 24th September 1997, Malietoa Tanumafili II conveyed his wish that the Falealili installed titles be recognized in Malie. Toelupe objected on the basis they are not descendants of the Malie-based Toelupe title.

Instead of examining the custom of the use of a title that is foreign to Malie, the argument shifted to the authority over Toelupe title. In order to determine the authority, the history of the village and the origin of the seven titles had to be related.⁹⁵

Malietoa Tanumafili II argued that the *pule fa'avae* of the *to'afitu* including the Toelupe title is vested in the Malietoa title. According to tradition, the *to'afitu* originated from Malietoa Savea's journey to Manu'a. The Toelupe title originated when Malietoa got hungry. One crewmember declared '*toe o le lupe o lo'o totoe*' (only a pigeon is left). The man cooked the pigeon for Malietoa Savea and Malietoa named him *Toeolelupe*.⁹⁶ After the court's investigation, the court confirmed the *pule* of Malietoa as the *pule fa'avae* (constitutive authority) of the Toelupe title, and ruled that the title Toelupe be removed from Vaito'a. It also confirmed Malietoa's authority to confer the title Toelupe on the aforementioned.⁹⁷

⁹⁴ The titles were given as *Igagato*, meaning they were given as gifts in recognition of exemplary services.

⁹⁵ See Appendix D.4, Toelupe Vaito'a's written submission.

⁹⁶ ⁹⁶ See Appendix D.5, Malietoa's written submission and D.6, *Ali'i* and *Faipule* written submission.

⁹⁷ See Appendix D.7, Land and Titles Court decision.

Toelupe Vaito'a's Appeal

(a) Not satisfied with the decision, Toelupe Vaito'a appealed to the court of appeal. He argued that the Land and Titles court's decision was inconsistent with previous decisions over the family titles and land in which the *pule* was vested in the Toelupe title - (LC 1045 – 1949). He noted that the *pule* of Malietoa title at Malie is the *pule fa'amalumalu*. He was appointed to the Toelupe title by the court on 16th May 1949. The court's decision has no legal power to omit any section of the previous decisions. The Court of Appeal upheld Toelupe's appeal and rejected the *pule fa'avae* of the Malietoa title for the following reasons:

- Seven appointments have been made to the Toelupe title and all were in Toelupe Vaito'a's line of ancestors with the seventh being Vaito'a since 1947 and confirmed in 1949.
- Following a family dispute in the court (between Fa'amausili Levi and Si'u – father of Vaito'a), Vaito'a's appointment to the title was confirmed by the court on 16th May 1949 in its decision LC 1045. At this dispute, the issue of the *pule* of Malietoa over the Toelupe title did not arise nor did Malietoa take part in the dispute.
- The court decision over the *pule* of the title Leafa and other *matai* of the *to'afitu* are vested in the *suli o le suafa* (heirs of the titles). Therefore it seemed inappropriate for the Malietoa title to have his *pule* attached to the title Toelupe and other posts of the *to'afitu*.
- Almost all of the court's decisions over the *pule* of land and titles between Toelupe Vaito'a and other families at Malie confirmed the *pule* of the Toelupe title.

Such court (LTC) decisions included the titles:

- | | |
|-----------------|-----------------------|
| (b) Toelupe | -LC 1045 - 1949 |
| (c) Seaga | -LC 5872 – 1978, 1985 |
| (d) Maualaivao | -LC 616 - 1978 |
| (e) Fa'amausili | -LC 5829 – 1978 |

Court's decisions over family customary land included:

- | | |
|--------------|-------------------|
| (f) Lalau | -LK 95 – 1906 |
| (g) Salaatoa | -LC – 1888 |
| (h) Falefasa | -P.V. 55/72 –1972 |
| (i) Tauaumoa | -LC 1906 |

On all of the above decisions, the Malietoa title did not interfere nor make any claim of *pule* or authority over them.

- The appointment of Joe, Alaoa, Siaki and Lalolagi Haini were rejected because they were not *suli* (heirs) of the Toelupe title.
- The *pule fa'amalumalu* or overarching authority of the Malietoa title over Malie was however confirmed.

Leafa Vitale

The dispute over the adoption by Malie of the Falealili based Toelupe title illustrates how players use customary and constitutional instruments for political maneuvering. Leafa Vitale, age 62 at the time became a Member of Parliament in 1988. He had a career before he entered parliament. He had worked as a mechanic in American Samoa, Hawaii and Middle Eastern countries. When he was chosen as the Minister of Works, former Prime Minister Tofilau Eti Alesana considered him as someone who could 'make things happen' with village rural electrification, expansion of piped water, and tar sealing of roads throughout the country. His popularity peaked when a stage at the Apia reclaimed area was named after him.

Leafa a former mechanic had been brought into politics in 1988 by the previous Prime Minister, Tofilau Eti Alesana, who rapidly promoted him to Minister of Works. That portfolio ...was the most coveted in government, because "that is where you get the money under the table". Leafa...had regularly received six figure "tips," or kickbacks, for awarding contracts. Much

of this money was reportedly fed into election campaigns; Leafa boasted that he had engineered the HRPP's last two victories (See Amnesty International.net.12 October, 2012).

His downfall came over allegations of contract irregularities and his personal threats of the media in 1996. Under Tofilau Eti Alesana's Cabinet in 1999, he was replaced as Minister of Work by a newcomer to politics by prominent lawyer Luagalau Levaula Kamu. Prime Minister Tuilaepa Sailele Malielegaoi reshuffled Leafa from the Post and Telecom to Women's Affairs in 1999.

While toppled at the national level, at the village level, Leafa Vitale was still powerful as a cabinet minister. He was one of the seven posts - *to'afitu* in the Malie village council having been conferred the title on 11 May 1977 by Leafa Sipa and his family. While powerful as a Minister in the national level, his power however did not extend over the village council in terms of decision-making. The power was vested in the most senior titleholder in the village in terms of longevity and service, Toelupe Vaito'a. Leafa's influence was subservient to Toelupe – a position familiar to many veteran politicians. For instance, Misa Telefoni Retzlaff was Minister of Finance and Deputy Prime Minister. But in Falelatai where he holds the Misa title, his ranking within the Sa Misa family is a junior one because other people were appointed to the Misa title before him, and thus their opinions carry more weight and become senior holder of the title before Retzlaff.

From this point of reference, Leafa Vitale tried to manipulate the village council in Malie. Instead of using his Le'afa title, he introduced himself as a Toelupe and thus openly challenged Toelupe as the sitting chair of the village council. It seems that Leafa was hoping that his position in the national government would sway the village council. Le'afa claimed that the Leafa title is the *matua* (elder) of the *to'afitu*. During the court case, he argued that the first name of the *to'afitu* was Leafa. When the thatches of the *alia's* house were blown away by the storm the first man who tied the thatches with the *afa* (sinnet) was named by Malietoa as 'Leafa'.

Furthermore, he noticed that the *pule* of the Leafa title of his *aiga* as confirmed by the court was vested in the heirs of the Leafa title, not the Malietoa title. When he petitioned the court for the *pule* of the Toelupe title, he was supported by Malietoa Tanumafili II but rejected by Toelupe Vaito'a. The court of appeal upheld Toelupe's appeal.

At present, Malie is occupied with many *matai* whose titles were conferred by Malietoa Tanumafili II. Many were appointed at Malietoa's residence at Fa'atoialemanu, in Vaimauga district. The increasing appointment of *matai* of this nature has belittled the significance and respect due to Malietoa. Many are alleged to have no family connection to the village to which the title belongs nor had they lived and rendered services to the family and village.

Chiefs are fond of quoting proverb "*o le ala i le pule o le tautua*" or the road to power (chiefly title) is good service as it motivates those who inspire to chieftainship to serve well and it is a reminder that an incumbent chief status was achieved and ascribed (Keene, 1968: 24).

About two weeks were spent regaling the history of the title and village for the purpose of deciding who had the authority over the Toelupe title. The relevant questions were ignored. What constitutes custom and usage when someone holding a foreign title decides to live and serve the village? Can the foreign title be used in the village and under what conditions? What is the custom for installing new *matai* using titles which are foreign to the village of residence?

If a *matai* title is conferred and not in the family residential sites to which it belongs and without the blessing of the village council then it is not officially recognized in the family and village. This is confirmed by Section 23 of the Act 1981 where it states that the village major must ascertain that the title belongs to the village and record the particulars of the appointment.⁹⁸ Without this condition, the village council does not have the authority to sanction any installation nor participate in village council proceedings. Due to the absence in the Act of, the court spent considerable. The uncertainty due to the absence of clear definition of custom and usage is further addressed in the next chapter in relation to customary land.

⁹⁸ See the Land and Titles Act 1981, Section 16 and 23 Part 1, 2, 3 and 4.

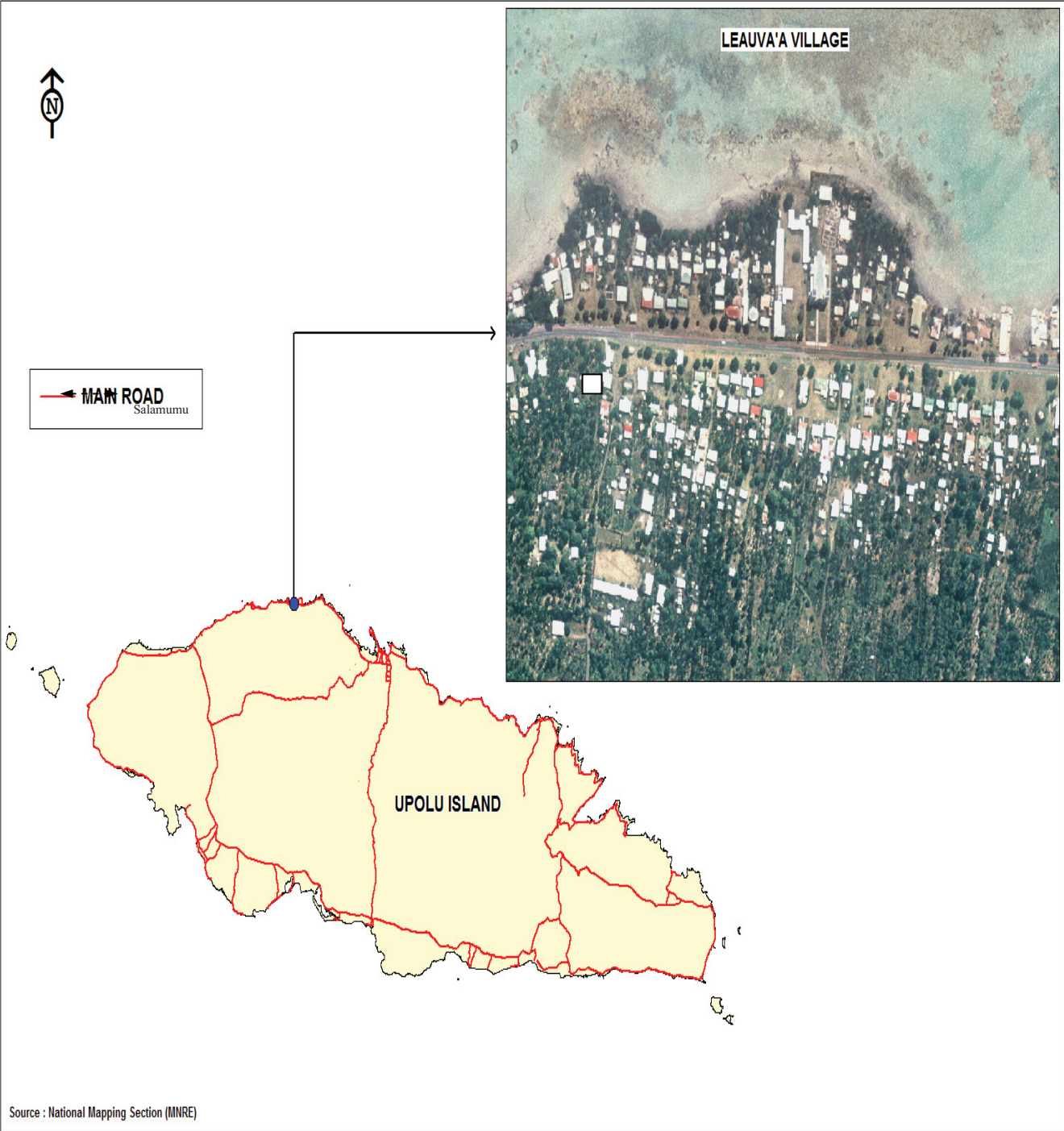
CHAPTER 7

Dispute over Pule of Land

The previous chapter showed the ambiguous role the court can find itself when custom pertaining to introduction of foreign *matai* title to the village council, and installation of *matai* titles by a foreign titleholder, are undefined. Instead of seeking answers to basic questions of customary practices relating to the introduction of foreign titles into another village, the court found itself litigating over the authority of titles, spending weeks listening to different versions of histories of title and village and in the process courting considerable manipulation of the past for political ends in the present.

Contemporary, customary or traditional tenure in the Pacific is a diverse mixture of varying degrees of customary practices, colonial law, policy and practice during the 19th century. This chapter presents evidence arising from lack of definition of what constitutes custom and usage over the reversion of a land grant to customary tenure. With increasing population growth, urban migration and the need for economic growth have placed more pressure on land particularly semi-urban areas with freehold land such as Leauva'a. The dispute is between an uncle and nephew, the uncle holding a titular *matai* and nephew a holder of a lowly orator *matai* title of Leauva'a situated between Tuana'i and Levi, Saleimoa, in Upolu.

Map 5: Leauva'a village



Historical background

In 1905, the Matavanu volcano erupted on the island of Savaii and the German administrator relocated the affected villagers of Lealatele and Saleaula to Upolu, with the former in Leauva'a at Tuamasaga district and the latter in Salamumu at A'ana district.⁹⁹ In their new abodes, they maintained affiliation to their original home Savaii in terms of *fa'alupega* and voting in their district of Gaga'emauga Number One. In 2011, Leauva'a numbered 3168 people with 1653 males and 1515 females living in 343 households with an average of 8 persons per household.¹⁰⁰ It's village council comprised 1781 *matai*, 1574 male *matai* and 207 female *matai*.¹⁰¹

In 1908 the German administration granted about 777 acres¹⁰² of government land to Lealatele settlers in Leauva'a. This land grant was eventually reverted to customary tenure. The Leauva'a settlers sub-divided the land into parcels of 10 *gafa* and each parcel was registered to a family *matai*.¹⁰³ According to the list of the sub-division, parcels of land were distributed to 67 *matai* in Leauva'a, 29 living on the seaward side of the government road and 38 on the landward side. The *fa'alupega*¹⁰⁴ of Lealatele is headed by the two titular titles, Tuala and Sala, with each supported by a group of orators collectively styled Salemuli'aga and led by the titles Tevaga and Vaifale both of equal rank. Within Salemuli'aga are lesser ranking titles, which include lesser ranking attendant orators such as the title Fulu. During the resettlement, most of the families that resettled in Leauva'a were orators while the titular families remained in Lealatele, Savai'i. Consequently many of the parcels were registered under orators including Poliko, who held the Fulu title whose titular *matai* is Tuala.

⁹⁹ Tuimaleali'ifano 1990:8; Ward and Ashcroft 1998:6.

¹⁰⁰ Census gathered from the Samoa Department of Statistics 2001.

¹⁰¹ See Land and Titles Court, Annual Reports 1994 – 2001.

¹⁰² Government land Parcels (Pcl. 185 and 186) Ministry of Natural Resources and Environment, 31 March 2005.

¹⁰³ Before modern survey methods, land was measured by *aga* – the equivalent of an adult male' foot step and the *tua'oi* or boundary was marked by stone fences or tree hedges.

¹⁰⁴ Tulouna a oe Salemuliaga, Tulafale o Tevaga ma Vaifale, Susuga a Muliagatele le Aiga Sa Tuala, Lau Afioga Sala ma lau Falevalu, lau Afioga Tuala ma lau Falesefulu.

The Nature of the Dispute - Land

In 1995, Vaea Ioane held the Fulu title within the extended family of Sa Tuala – the family of Tuala. Fulu Vaea Ioane lived in a European house located close to the road. The house was located in Maotasa, residence of the Tuala title, which at the time was held by Tuala Patolo Talipope III.¹⁰⁵ This meant Fulu's house was located in front of the residential site of Tuala and his family. Fulu's house had been damaged by Cyclone Val in 1991 and sought to renovate it. When Tuala heard about it, he orders a stay expressing a wish for a *faletalimalo* - large house for guests and visitors- to be built. He furthermore asked Fulu Vaea Ioane and his family to relocate their family house.

Fulu Vaea Ioane took the matter to the Land and Titles Court and the court official proceeded to mediate. In response to a letter from the officer in December 1994, Tuala Patolo Talipope III explained, that the parcel of land was registered under Fulu Poliko. When Fulu Poliko died the land reverts to the authority of the principal titular *matai* of the family, namely Tuala. The official advised him to discuss the matter with Fulu Ioane but it seemed little came out of this.

On April 1995, the official visited Leauva'a and Tuala Patolo Talipope III repeated his wish, whilst Fulu Vaea Ioane remained unmoved. As a result, Fulu Poliko's original registration was confirmed. It was also confirmed that both parties are descendants of Fulu Poliko. It was reaffirmed that the title Tuala is the *sa'o* (principal *matai*) of the family and the title Fulu is an attendant orator title, and the *pule* or authority to confer the title Fulu is vested in the Tuala title. Vaea Ioane was bestowed the Fulu title under the authority of the Tuala title which was at the time held by Patolo Talipope III.

Tuala wanted Fulu Vaea Ioane and his family to relocate their house behind Tuala's house within the family holding of Maotasa. In Tuala's view, this relocation accords with family and village hierarchical protocol between the titular title and his orator. The official's report recommended that Fulu Vaea Ioane be allowed to renovate the house but no extension was

¹⁰⁵ Patolo Talipope III had held the Vaifale title before he succeeded to the Tuala title in 1982.

permitted. Unhappy with this, Tuala Patolo petitioned the court for the authority of the parcel of land in Maotasa.

He argued that the land on which the house is located is under the title Tuala and is a parcel of customary land called Maotasa, and furthermore, Fulu is living on the land under the authority of the title Tuala. On the other hand Fulu Vaea Ioane argued that the *pule* of the parcel of land in Maotasa was vested in the title Fulu and not the title Tuala. The allocation of the parcel was written under the name of Fulu Poliko and thus the authority over the parcel of land lies with the title Fulu.¹⁰⁶

The Court Hearing

The issue presented in the case is a dispute between a titular and orator titleholders over a piece of land that was registered under the orator. The land has now reverted to customary land and the titular and superior title is now claiming authority over it. The question is, what is the custom and usage relating to a parcel that was originally registered under a lower title but now claimed by a higher title under the assumption that the land has reverted to customary land laws? Fulu Vaea Ioane submitted his written submission regarding the *pule* of the 10 *gafa*. He states:

I, Fulu Vaea Ioane [had] already met with Tuala Patolo Talipope III about the renovation of the house. The renovation was a preparation for the 150 years since the Roman Catholic Mission arrived in Samoa. Tuala Talipope III did not like the idea. As a result, Fulu Vaea Ioane sought help at the Land and Titles Court. The Registrar agreed for me to renovate the house and allowed Tuala Patolo Talipope III to file his petition if he disagreed with the decision of the Office (LTC). The Government of Samoa granted the land of (sic) Leauva'a to *Ali'i* and *Faipule* who came from Lealatele, Savaii during the volcanic eruption in 1905. The 10 *gafa* (N0 20) is written under the name of Fulu Poliko. When Tuala Patolo Talipope III built his houses on the land we did not *fa'alavelave* (interfere) with the establishment of his houses. The construction of his store was objected to by Fulu Kalolo and only when Fulu Kalolo agreed did construction proceed. Both parties are *suli* of both titles Tuala and Fulu of Maotasa, Leauvaa. The *pule* of the parcel of land under

¹⁰⁶ See Appendix E.2, Fulu Vaea Ioane's petition to the court.

dispute is vested with the title Fulu. The title Tuala is the *sa'o* of the family and the *pule* of the title Tuala is owned by the *aiga potopoto* (extended family).

In confirming his version, Fulu Vaea Ioane related his genealogy and connection.

Genealogy given by Fulu Vaea Ioane

Tuala Taetafe married Rosa (daughter of Lauano of Patamea) and issued Fulu Poliko (male) and Apolonia (female). Fulu Poliko subsequently succeeded to the Tuala title. Tuala Fulu Poliko married Taisega (daughter of Vaifale Tuu of Samalaeulu) and issued Milo, Patolo, Sefo, Aniseto (males) and Malia (female). Milo married Malia (daughter of Taulamago of Salago) and issued Leo, Sio, (males) and Nila, Kalala and Ake (females). Patolo married Silia (daughter of Tapu of Saleimoa) and issued Tina and Nita (females). Aniseto married Fa'aulia (daughter of Tuimaleali'ifano Fa'aoloi'i Si'ua'ana of Falelatai) and issued Tuala Patolo Talipope III, Isumu, Poliko Jr (males), Iole, Segia and Imoa (females). Sefo was barren and died without descendants. Malia (daughter of Tuala Fulu Poliko) married Tanoa'i and issued Fuifui Salaivao (female). Maria married again to Tauasa of Manase and issued Fulu Kalolo. From the genealogy, Tuala Fulu Poliko was the last titleholder of the title Tuala in the sub-branch or *fuaifale* of Tuala Taetafe. Fulu Vaea Ioane is the son of Nita, daughter of Patolo (second son of Tuala Fulu Poliko). Tuala Patolo Talipope III is the son of Aniseto (4th son of Tuala Fulu Poliko).

Confirmation of Fulu's *pule* over the parcel of land

In his submission, Fulu Vaea Ioane provided evidence to show that the *pule* of the land belongs to the title Fulu. He pointed out that in 1969, compensation for taking part of the land in Maotasa for the extension of the main government road was paid to Fulu Kalolo as the titleholder of the title Fulu at that time. Fulu Kalolo's *pule* allowed Tuala Patolo Talipope III to build his *faletalimalo* and store on the piece of land under dispute. He submitted that the *pule* of the title Tuala over the *aiga potopoto* or extended family is the *pulefaamalumu* –or overarching and protective authority. This lies with Tuala Patolo Talipope III.

In the genealogy, Tuala Patolo Talipope III is the uncle of Fulu Vaea Ioane and thus the dispute is one between a father and the son. It is also a dispute between the principal *matai* and his *tulafale*. In his submission, Tuala Talipope stated that:

The 10 *gafa* (10 fathoms) is written under the name of their father (Fulu Poliko). Fulu Poliko also held the family title Tuala. The *itu tetee* (responding side) and *itu tagi* (petitioning side) are heirs or *suli ma feoi* of Tuala Fulu Poliko. In this case, both parties share the same *pule tutusa* or authority to the parcel of land. The dispute started when Fulu Vaea Ioane and his family disobeyed his order to dismantle the house on the disputed land. He wanted to build a guesthouse or *faletalimalo* on the site where the house in dispute is located for the following reasons:

- (a) In preparation for the 150 years anniversary of the Roman Catholic Mission's arrival in Samoa.
- (b) The front part of the village at Leauva'a is solely for guesthouse or *faletalimalo*. The *aiga* of Tuala Patolo Talipope III should lead in everything or *muamua i mea uma* at Leauva'a because their forefather (Tuala Taetafe Talipope I) accepted the Roman Catholic Mission at Lealatele, Savaii in 1845.

In confirming his position within the extended family, Tuala Patolo recounted his genealogy.

Genealogy of Tuala Patolo Talipope III's

Fulu Poliko, also known as Tuala Fulu Poliko Talipope II (son of Tuala Taetafe Talipope I) had four (4) children. The eldest son was Lauano Milo, Patolo (second), Fulu Vaifale Aniseti (third) and Maria (the youngest and the only daughter). Patolo had two daughters, Tina and Nita (mother of Fulu Vaea Ioane). Maria (only daughter of Fulu Poliko II) looked after her nieces until they grew older.

Vaifale Patolo bestowed with the Title Tuala

Before Maria died, she declared her *mavaega* (dying wish/ solemn proclamation) that Vaifale Patolo should succeed to the title Tuala. To prepare for his *saofa'i* or title installation, he went to New Zealand seeking financial assistance. While he was in New Zealand, his brother, Taulamago Isumu called him and explained that Fulu Kalolo was about to be bestowed with the title Tuala without the consent of the

extended family. The matter was settled in the court in 1980 and the title Tuala removed from Fulu Kalolo. The court ordered the *aiga potopoto* (extended family) to choose a candidate for the title Tuala within three (3) months. There was no mutual agreement and the issue returned to the court in 1982. The court appointed Vaifale Patolo to the title Tuala, of the sub-branch or *foaifale* of Tuala Taetafe.

Grounds of the Land and Titles Investigation

The Land and Titles Court' established that Tuala Patolo Taetafe III or *itu tagi* (petitioning party) and Fulu Vaea Ioane or *itu tete'e* (responding party) are both heirs of Fulu Poliko. Both parties are *suli/feoi* (heirs) of Tuala Taetafe. Tuala Patolo Talipope III lived on the land because he is an heir of Fulu Poliko and as the *sa'o o le aiga* (titular *matai*).

The court confirms that the government land at Leauva'a was divided in 1908 at a time when the title Tuala was vacant. The Leauva'a villagers divided the land into 10 *gafa* and the disputed 10 *gafa* was written under Fulu Poliko's name, a son of Tuala Taetafe (aka Tuala Talipope I). When Fulu Poliko was bestowed with the title Tuala, the family called him Tuala Fulu Talipope II. Tuala Patolo Talipope III is the son of Vaifale Fulu Anisetu (brother of Tuala Fulu Talipope II). Both parties have the same ancestor of which there was no dispute. Here, the court relates a custom relevant to the issue. It confirmed the title Tuala is the *sa'o o le aiga* (titular *matai* of the family) and ruled that in terms of *aganu'u ma agaifanua* (custom and usage), the title Fulu is an orator title serving the titular title. According to custom and usage, it is unusual and rare for a house of a *matai tautua* to be located in front of the house of a titular *matai*, particularly one to which the lesser title serves. Marsack argues (1956:182) that according to the law, any person may erect a house in the village as long as it complies with the regulations relating to stability and hygiene. Marsack relates a customary practice in relation to the case in question, namely that no person may erect a house in the village with a foundation that is higher than that of the paramount chief.

In addition to establishing the customary relationship between a service title and titular title, the court also established the family relationship between Tuala Patolo Talipope III and Fulu Vaea Ioane as one of an uncle and nephew or in the Samoan perspective, a father and son.

Further, it was also established that Tuala Patolo Talipope III had conferred the title Fulu on Vaea Ioane.

The court also established that both parties have the same rights on the disputed 10 *gafa*. Because Tuala Patolo III is the *sa'o* of the family and the name of the land called Maotasa is the official residential site of the title Tuala, the *pule* of the land is vested in the title Tuala. The court ordered Fulu Vaea Ioane to dismantle his house and ordered Tuala Talipope III to choose a portion of land on the 10 *gafa* for Fulu Ioane and his family to relocate their house.¹⁰⁷ Clearly the court applied customary practices, but this understanding apparently did not remain as the matter took a different turn at the court of appeal.

The Court of Appeal

Fulu Vaea Ioane appealed the Land and Titles Court decision to the Court of Appeal on the basis that the land was not divided according to *aganu'u ma agaifanua*, that the land was written under Fulu Poliko who was also bestowed the title Tuala and was the recipient of compensation during the extension of the Government road, evident that the land is under the title Fulu.

The Court of Appeal reversed the Land and Titles Court's decision and confirmed that the land was granted by the Government to *Ali'i* and *Faipule* of Leauva'a. The land grant was solely to those who sought refuge during the volcanic eruption in 1905. In 1908 the land was sub-divided by *Ali'i* and *Faipule* into 10 *gafa* (10 fathoms) for the resettled community. The lower court's decision (L.T.C.) – L.C.9522 & L.C.9522 P1 of 28th July 1995 was dismissed and the *pule* of the 10 *gafa* (N0 20) remained under the title Fulu held by Fulu Vaea Ioane.

¹⁰⁷ See Appendix E.3, Land and Titles Court decision.

Reconsidering the Court's Decision

A major problem in cases concerning freehold land which have reverted to customary authority of the village council was identified by Vaai.

With regard to land, *pule* is given by the Court only to *matai* particularly the *sa'o* or the titular head and occupants of land are to respect the authority of the *matai*. A person therefore who occupies land under the *pule* of the *matai* and does not respect the authority of the *matai* will be ordered to vacate that land. The court also recognizes the *pulefa'amalumalu* or protective authority of customary land as vested in the *Ali'i* and *Faipule* but the Court will examine the reasonableness of the exercise of such authority.¹⁰⁸

Impact of the Court of Appeal's Decision

The Court of Appeal's decision was based on the name of the person written for the 10 *gafa* which in this case was Fulu Poliko. But other factors seemed to have been ignored. Both parties were descended from the common ancestor in whose name the parcel of land was allocated. The *pule* of the attendant title is held by the titular title Tuala to which Fulu Poliko subsequently succeeded. There seems to be confusion between two laws, custom and usage dictates that *pule* is vested with the titular title yet the statute or English common law dictates that *pule* is vested in the name under which the land was registered. The fact that the land reverted to customary authority did not seem to have been considered, in which case the land would come under the authority of the superior titular title, of which Fulu Poliko also held. The implications of the confusion between the interpretations by the two law courts would seem serious in the long-term. There is continued tension between the two families over future appointees to these titles and consequently on their ability to turn their land into productive use. These are areas for which the Act remains silent and needs some attention to build on experience and precedence.

This case shows that families seeking redress in the courts can be further torn by contradictory interpretations of what constitutes custom and usage. If any reconciliation takes place, it is often recourse to other senior family members closing ranks and drawing on the family's association with the church and its message of peace. In 2002, Tuala Talipope III died and his

¹⁰⁸ Vaai 1999:234-235.

family accepted the appeal's court decision even if begrudgingly. Whichever way the court decides, it is clear, one side would be dissatisfied. The losers may have a better chance if the rules of the games were clear to all.

From another perspective, the village council was not consulted. It is good practice in previous cases for the court to seek an opinion from the village council. Why it was not done in this case is speculative. The government land grant was reverted to customary land under the overarching protective authority of the village council who in turn sub-divided it. It is generally accepted that government land granted to any village council comes under customary law and village council. Even though the land grant was allocated to *matai*-refugees, the land remains under the village council's *pule fa'amalumu*. Examples of minimizing disputes can be found elsewhere.¹⁰⁹ The village council should be empowered to intervene in disputes of this nature before intervention by the Land and Titles Court. The extent of village council's *pulefa'amau* poses another problem relating to undefined custom and usage. This is the topic of the next chapter.

¹⁰⁹ One is the block of land called the *faatafafa a Fata ma Maulolo* (square block of land owned by Fata and Maulolo of Afega village). The village council of Afega allocated the block of land for plantations to people of Tuana'i and Leauva'a. If any dispute arises between Tuana'i and Leauva'a families, it is settled by the village council of Afega and is referred to the Land and Titles Court. Another example is the land granted by the government to Salamumu village. It is hoped that this case study will draw lessons to other government land settlement disputes such as Si'umu land at Vailima, land at Salamumu, Satuimalufilufi and Satapuala.

CHAPTER 8

Pulefa’amau: Conflict between the Act and the Practice

The word *pule* means authority and *fa’amau* means to hold firm or to write or record in writing which in this case means the authority over land. According to O’Meara¹¹⁰, ‘*Pulefa’amau* means to ‘fix’ or ‘a register authority’ over land and titles...’. Ward and Ashcroft¹¹¹ define *pulefa’amau* as family lands which are divided into a number of plots or parcels known as ‘*aiga* land holding’

The word is also defined in the Land and Titles Act 1981. *Pulefa’amau* means:

the ownership of any customary land or control of any Samoan name or title either by a person in his sole right or on behalf of any Samoan title, family, village or district (Land and Titles Act 1981:4).

How one becomes an owner of customary land is not spelt out.

Pulefa’amau is further defined in Section 14 of the Act. *Pulefa’amau* is defined specifically in terms of family title but is silent on customary land.

Any Samoan who claims a *pulefa’amau* or who intends to appoint any person to be the holder of a *matai* name or title may give notice of such claim or intention to the Registrar at the office of the Court in Savai’i or Upolu (Land and Titles Act 1981:9-10).

Under this section, *pulefa’amau* is defined as “an intention to appoint”. But the intention refers only to *matai* title not land. In the absence of a specific reference to customary land in Section 14 of the Act, what constitutes custom and usage in relation to *pulefa’amau* over customary land falls on the court as interpreter and arbiter.

During New Zealand’s administration, customary landowners have sought to strengthen their rights over customary land by securing a *pulefa’amau*. Once secured, customary land can be leased for commercial purposes. The procedure for acquiring a *pulefa’amau* over customary land is by application to the court. The process is complicated, confusing and poorly understood, much of it resulting from the absence of a specific definition of

¹¹⁰ O’Meara 1995:150.

¹¹¹ Ward and Ashcroft 1998: 65 – 67.

what constitutes *pulefa'amau* over land. This chapter explains the role of the court as arbiter in this confusion and how villagers manipulate the confusion. The first confusion arises from the absence of a specific definition of *pulefa'amau* with respect to land in the Land and Titles Act 1981. The second arises from the way the court interprets and arbitrates in the absence of a guideline. The third arises from manipulation as a consequence of the ambiguity.

Background

The practice of a *pulefa'amau* or registrations of an individual or communal *pule*¹¹² on customary land has its roots in colonial policies. In 1920, New Zealand developed Samoa as a plantation economy. In agriculture, villages and districts joined the New Zealand Administration Agricultural Schemes. The expansion of cash crop production encouraged the villagers to reduce their dependency on copra by diversifying into cocoa and bananas.

As the population increased, people sought to 'control land as individuals or within nuclear families rather than through the title of the *matai* of the 'aiga'. Moreover, the increasing fragmentation of *matai* titles among several holders and consequent disputes over family land appear to be driving individual as oppose to communal ownership of land. O'Meara argued that:

This splitting, sharing and creation of titles hopelessly confuses customary tenure, which is an important reason in itself and why people now want individual ownership of lands they occupy. On the other hand, people's desires for individual ownership and for broader economic independence are important motivations for seeking or accepting their own *matai* titles in the first place.¹¹³

Furthermore, the decline in subsistence farming and growth in commercial agriculture resulted in the increase of 'aiga – family holding land individually. Ward and Aschcroft also noted that:

Rising population from 1920s onward added to the pressures pushing the forest edge further inland on customary village land...Those who recognize and

¹¹² The common translation by the Land and Titles Court of *pulefa'amau* is 'claim and intention to appoint' but the implication of the term suggests registration or an application for registration of one's *pule*. For the purpose of this discussion, I will use intention or application to register.

¹¹³ O'Meara 1995: 149.

support the trend towards individual control of land have been active in forest clearance on customary land...The net result of the increased area cleared for cash crops.... between 1954 and 1988... the area of cleared land per head of population increased between 30 to 49 per cent.¹¹⁴

The New Zealand Administration realized that Samoa's prosperity would be minimal due partly to the '*aiga potopoto* – extended family - network over customary land. For instance, the *famua faa-le-agamu'u* (customary land tenure) cannot be treated separately from families and village communities. Land is communally held for the sake of the '*aiga potopoto* and the *nu'u*. Every member of the family can work on the land while they are in need under supervision of the family *matai*.

Hence, Social Scientist observed that customary land tenure was a major hindrance to economic development. For instance, road construction encroached on customary land, and therefore landowners stopped road construction work. Patea observes that whatever customary land is affected by any form of development, disputes will invariably arise delaying progress, sometimes for extended period of time' (Patea, 2002: 1)

The system of common interest in each property is still clung to by the Samoans with great tenacity.... This communistic system is a sad hindrance to the industrious and eats like a canker worm at the roots of individual or national progress (Turner, 1884:160).

After studying the Tongan system, the New Zealand Administration adopted some of the Tongan system in Samoa and this shifted the system toward the individualization of land holding. The register of land held under *pulefa'amau* has increased since the 1920s. Former Land and Titles Court Registrar, Galumalemana Netina Schmidt (1994: 174) noted that;

the limitations of *mavaega* (death wish) or written will by excluding interests of other heirs and by vesting ownership of land and titles on untitled men and women, were remedied by the institution of the *pulefaamau* in the 1920s. The ownership has to be registered under the owner's title; *pulefaamau* is similar to the concept of individual ownership in so far as it legally excludes occupation and usage of land by any other owner or his heirs. Even after absence from the family or country, the owner can claim back his land.

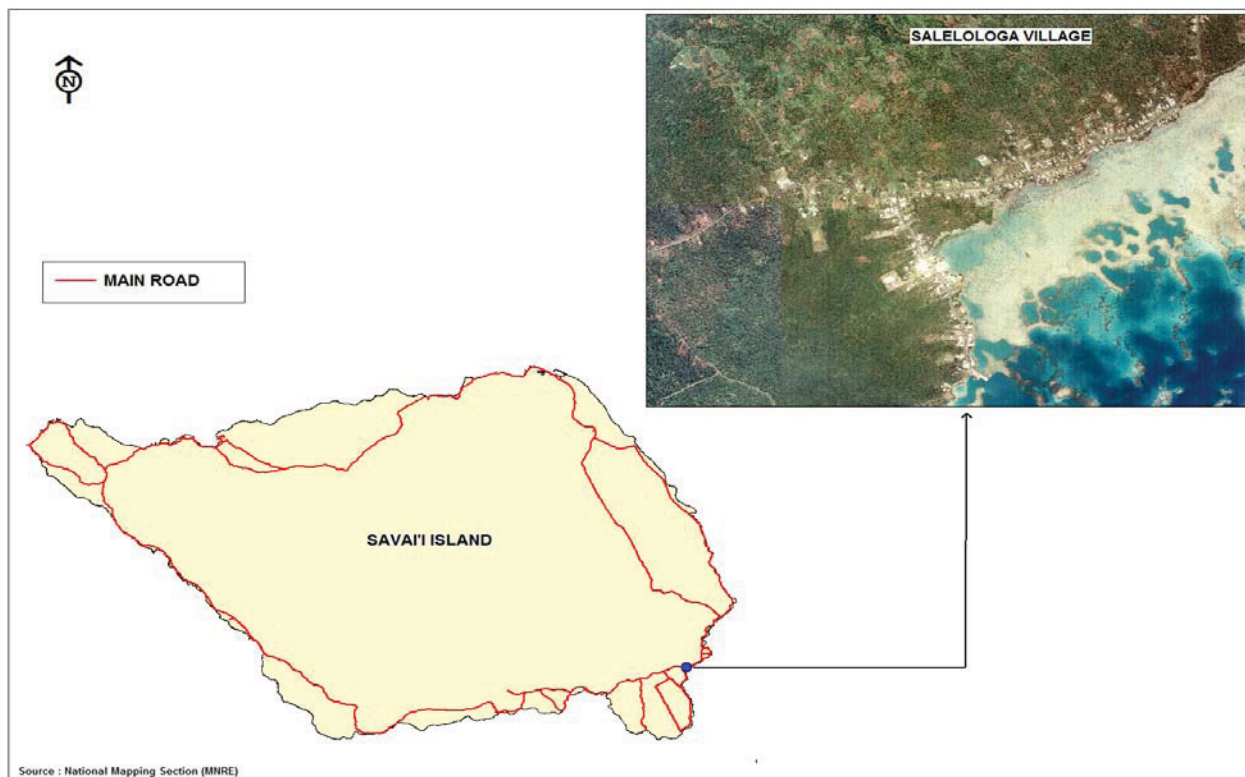
¹¹⁴ Ward and Ashcroft 1998:31-37

More confusion arose from The Land and Titles Act 1981. It had not clearly classified which person was eligible to make a *pulefa'amau* - was it only the *matai* or could it include a *taule'ale'a*. Marsack (1958) stated that Samoan customary land was held appurtenant to a particular title or titles. In a real sense, *pulefa'amau* which emphasizes the rights of the individual irrespective of his/her status over the customary land undermined the authority of the *matai*. O'Meara (1987:77) asserts:

...the change in tenure systems has proceeded to the point where the majority of village lands is now held by individuals, rather than extended families and are inherited directly by those children rather than indirectly through the acquisition of *matai* titles as in the traditional system.

The interesting question is whether customary land once registered as *pulefa'amau* can be perceived as 'freehold land' and whether it can be alienated after registration to a person or group of people in the 'aiga? These uncertainties regarding *pulefa'amau* over customary land was evident from cases in Fataloa, Salelologa, Savaii.

Map 6: Savaii - Location of Fataloa, Salelologa Village



Salelologa

Salelologa is located in the district of Fa'asaleleaga No 1, south-east of Savai'i. The population density is high because it is the main port and commercial center of Savai'i.¹¹⁵ In 2011, it had a population of 2,919. The village council consists of 1794 *matai* of which 1614 were males and 180 were females.¹¹⁶

Nature of Dispute at Fataloa

The heart of the commercial center lies in a land called Fataloa, adjacent to the government wharf and is therefore of high value. Fataloa is under the *pule* of the village council of the *pitonu'u* (sub-village) of Sapulu with a total population of 1085 people in 2011. The number of households in Sapulu was 34 with an average of 7 persons per household. The number of residents in Fataloa was about 265. The number of households was about 31 with an average of 6 persons per household.¹¹⁷ The eastern side of Fataloa was subdivided to *matai* who had helped with the construction of the wharf. Most of the *matai* had leased their land to businesses and the money from the lease is collected and controlled by the *matai* ostensibly on behalf for his/her family.

The registration of *pulefa'amau* was rare in Salelologa but soared when the Government in 1995 classified Salelologa as a township. The *pulefa'amau* allows the holder to lease land to businesses and foreign investors. The following case study shows how locals either as a *matai* or *taule'ale'a* have used the *pulefa'amau* to take advantage of commercial opportunities. As note above, the Act 1981 is mute on the definition of what constitutes a *pulefa'amau* when it comes to customary land and so the court arbitrates.

¹¹⁵ *Matai* population recorded by the Land and Titles Court, Annual Report of 1994 – 2014.

¹¹⁶ Samoa Census in 2011 recorded by the Department of Statistics.

¹¹⁷ Samoa Census 2011 recorded by the Department of Statistics.

Case Study 1: Pulefa'amau by Leuamuli Fa'avae on Land in Fataloa

A business couple, Tui and Masi Retzlaff built their business on Fataloa established on customary land leased from Ologa II and holder of Leuamuli title. A lease was negotiated and approved on 28 June 1959 after 3 months publication. Tui's father H. J. Retzlaff paid the lease for 20 years and renewed it for another 20 years. The leased land covered both sides of the government road. In 1995 the couple desired to build a new shop and wanted to buy the land from Leuamuli Fa'avae, son and successor of the late Leuamuli Ologa II. Because of the cumbersome process of transferring customary land to freehold land, Leuamuli Fa'avae decided to register his *pulefa'amau*, and through it he planned to eventually sell. In 1995, without consulting other heirs of Leuamuli Ologa II, Leuamuli Fa'avae applied to register his *pulefa'amau*.¹¹⁸ Parties to the *pulefa'amau* did not include the 'aiga potopoto.

Assuming his superior authority as the holder of the family *matai* title, his application to register his *pulefa'amau* was duly published in 1995 without the consent of his two sisters. Once informed of their brother's intention, Leuamuli Fa'avae's sisters, Mele and Elisapeta, lodged an objection on the basis that they had not been consulted on their brother's intention to register a *pulefa'amau* on family land. Eventually, both sides were summoned by the court office in Tuasivi.

After the discussion Leuamuli Fa'avae agreed to withdraw his *pulefa'amau* and to reconcile with his sisters. While reconciliation was in process Retzlaff began constructing a building on the disputed site. Mele Leuamuli wrote to Mulinu'u requesting the Registrar to issue an Interim Order to stop construction.¹¹⁹ The interim order was addressed to Leuamuli Fa'avae who ignored the court order. He responded by petitioning the Court:

1. To confirm that Tui and Masi's shop is situated on the land vested in the title Leuamuli as Leuamuli Fa'avae is the current titleholder.
2. The portion of land called Fataloa was leased to Retzlaff by the sole agreement of their father Leuamuli Ologa II.

¹¹⁸ The boundaries of the land are north with Seumanu Sila, South with Seumanu Saleilua, east with the sea and west with the road to the wharf. See Appendix F.1, publication of the *pulefa'amau* in the *Savali*.

¹¹⁹ Interim Order by the Registrar, See Appendix F.2, Section 50/81 of the Act 1981.

3. The house in dispute was built on the same location where the old shop was situated.¹²⁰

About ten years, the construction work has stopped and Retzlaffs returned to their old building. The dispute remains unresolved without a clear guideline on what constitutes custom over *pulefa'amau* regarding customary land.

Case Study 2: Pulefa'amau by Taotua Fulisia

In March 2000, Fulisia, holder of the *matai* title Taotua registered his *pulefa'amau* over 4 acres of land on Fataloa on behalf of the descendants of Taotua Potoae, their deceased father.¹²¹ The *pulefa'amau* was published in the Savali 31 October 2000 and there was no objection.¹²²

Taotua Fulisia' 1st Pulefa'amau of 4 acres on land Fataloa

1acre	2 acres
Taotua Fulisia	Taotua Fulisia
3 acres Taotua Fulisia	4 acres Taotua Fulisia

The publication of notification was approved in accordance with section 18 and 19 of the Land and Titles Act 1981. Section 18 of the Act states:

¹²⁰ See petition A.L.T.C 2/10/2001.

¹²¹ The boundaries were set as west with Matamua Paulo, east with Taotua Uati, north with the sea and south with part of Fataloa. The *pulefa'amau* was published in the Savali 31 October 2000 and there was no objection. See appendix F.3.

¹²² See Appendix F.3, *pulefa'amau* in Samoan version.

If there is no objection to a claim for a *pulefa'amau* or to the proposed appointment the Registrar shall, as soon as possible after the time fixed for lodging objections, prepare, sign and file a petition to the Court for confirmation.(Land and Titles Act 1981:10).

The President/Deputy President of the Land and Titles Court sitting alone can confirm the *pulefa'amau* as the court's decision without the presiding bench and parties' participation to deliberate on the issue. There is no Court hearing as pointed out by Section 19 of Act states that:

If there is no objection the court, sitting without Samoan judges or Assessors, shall have jurisdiction, ex parte, to confirm wholly or in part and with or without modification any claim for a *pulefa'amau* or the making of any appointment against which an objection has not been lodged and every confirmation shall ensure for all purpose as final decision of the Court (Ibid).

In May 2001, the Court confirmed the *pulefa'amau* by Taotua Fulisia and heirs of Taotua Potoae.¹²³ In April 2002 Taotua Fulisia applied for another *pulefa'amau* on approximately ½ acre of the same land (4 acres) with the specific purpose of selling it to Chen Ming Gun.

Taotua Fulisia's 2nd Pulefa'amau – 4 Acres of Land on Fataloa, Salelologa, Savaii

1 acre		2 acres	
Taotua Fulisia's 2 nd <i>Pulefaamau</i> on land Fataloa to Cheng Ming Gun ½ acre	Taotua Fulisia ½ acre	Taotua Fulisia	
3 acres		4 acres	
Taotua Fulisia		Taotua Fulisia	

¹²³ See Appendix F.4, Court's decision ALC 5713, 15 May 2001.

The proposed sale fell through and after three months, Taotua Fulisia re-applied for another *pulefa'amau* on the same land. The new application for a *pulefa'amau* was to re-issue it to Gerwin Keil. The size of the *pulefa'amau* was about 1 acre and included the ½ acre intended for Gun.

Taotua Fulisia' 3rd *Pulefa'amau* of 1 acre on land Fataloa to Gerwin Keil

1acre		2 acres	
N.B. This ½ acre previously <i>pulefa'amau</i> to Chen Ming Gun and then later on <i>pulefa'amau</i> to Gerwin Keil	½ acre Gerwin Keil	Taotua Fulisia	
3 acres		4 acres	
Taotua Fulisia		Taotua Fulisia	

The Court confirmed the *pulefa'amau* to Gerwin Keil but a confusion common in local land dealings arose from this transaction. There were three conceptions of the *pulefa'amau*. Taotua Fulisia made three applications to register his *pulefa'amau* on the same land. Firstly, for 4 acres on behalf of his family. The court approved the *pulefa'amau* on 15 May 2001. Secondly, he applied for the ½ acre of the 4 acres to be issued to Gun. Gun later refused to buy the land and the matter was dropped. Thirdly, Taotua again applied for 1 acre from the same 4 acres for Gerwin Keil.

In all three cases, the Court granted Taotua Fulisia's application to register his *pulefa'amau*. The main reason for this is because the Act is mute on the definition of *pulefa'amau* in

relation to customary land. The Act is also mute on the number of applications for *pulefa'amau* on the same piece of land. Under normal circumstances, the court should be in a position to monitor the number of applications and safeguard against multiple applications over the same piece of land. In Taotua's case, the numbers of application for *pulefa'amau* over the same piece of land multiplied and in all cases were approved. The grant of a *pulefa'amau* to non-residents is also questionable as Gun was not a Samoan citizen.

Summary of Confusion over Pulefa'amau

The above cases indicate that *pulefa'amau* are motivated by family titleholders attempting to pass customary land to immediate descendants rather than to the extended family. The increasing number of applications for *pulefa'amau* at Salelologa was intensified by its classification as a town. The number of application corresponded to the growing number of court petitions as customary landowners attempted to cash in on the market value. To transfer customary land to freehold land involves a time consuming and expensive process, lands commission, public trust, lands and survey before the issue of deeds. Under the constitution, it is also illegal to lease it to non-citizens. For the business-minded *matai*, it makes more sense and convenient to use the *pulefa'amau* procedure to transfer customary land to 'freehold customary land' rather than the bureaucratic government procedure. Freehold customary land simply means a customary land owned individually without any objection of three months publication and it was approved by the Land and Titles Court. To some extent, an Individual economic interest seems to be a major factor in abusing the concept of *pulefa'amau*. According to the constitution, customary land cannot be alienated.

According to section 102 of the constitution:

It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his decease or insolvency:
Provided that an Act of Parliament may authorize-

- (a) the granting of a lease or license of any customary land or of any interest therein;
 - (b) the taking of any customary land or any interest therein for public purposes.
- (Constitution of the Independent State Samoa, 1960: 49).

Pulefa'amau is a convenient tool for *matai* to “sell” off customary land. In the case of Gun and Keil, the ½ and 1 acre of land was going for T\$100,000 and T\$200,000 respectively. The only legal alternative is to lease customary land under the name of the family *matai*.

What the cases reveal are inconsistencies between the Act 1981 and decision-making process in the court. *Pulefa'amau* seems to be used by family members to appropriate customary land and is a major cause of tension amongst the ‘*aiga potopoto*. Marsack lamented that *pule* over customary land is the most misunderstood conception in modern Samoa. In such cases, Marsack (1958: 22-23) emphasizes that disputes over individual ownership of customary land had resulted from what he called ‘confusion’ or ‘misunderstanding’ among Samoans of their own customs. In contemporary land tenure principles and practices O’Meara (1995:122) observes that:

The traditional ‘Samoan desire for permanence in the relationship of title to land’ has been erased. Both ownership and *pule* are now usually inherited by the children of the former owners without regard to the particular *matai* titles any of them might hold, and increasingly within the last 10 years even without regard to whether they hold *matai* status at all. Thus, individual have replaced corporate ‘*aiga* as the primary land owing units, nuclear family households have replaced multi-household extended families as the primary socio-economic individualism has largely replaced the ‘communistic system’ of Old Samoa.

While the example of urbanized Fataloa in Salelologa confirms O’Meara’s observations, this has not changed the traditional authority of the family *matai* and village council over village land. The majority of Samoans realize that *pulefa'amau* is the procedure to secure the right of the untitled person or individuals over the customary land on the basis of having cleared land or *o le laau na muamua pau o lou lena fanua*.

The village land is under the *pule fa'amalumalu* of the village council and each member of the family cultivates the land to render *tautua* – service to the family *matai*, '*aiga*, *nu'u* and *lotu*. In addition, the court practice declares that the *pule* of the family land rests with the family title. In this case, if a *matai* converts family land to his personal use, the dispossessed family members can either withhold their labor and support, or relocate to another family where the *matai* is less abusive or lodge a petition with the court – as many do. Although rare, the family members can also petition the court to remove their *matai* from his position. A *matai* therefore may be disinclined to act against the interest or wishes of the *aiga* because without their support, he/she is toothless.

Another point contributing to the confusion over *pulefa'amau* is the subversion of the postal service by the village *pulenu'u* or mayor. Subscription to the local newspapers including the official government newspaper *Savali* is expensive and overseas residents are understandably left out regarding notices concerning customary land and family title proceedings before the court. A common complaint by local residents is against their village mayor who acts as local post office. The researcher often heard concerns from the people who came late to the court office to lodge their petitions over *pulefaamau*. When they arrived, they found that the court had already confirmed the application and that the mayor had concealed the information through the selective disbursement of the government newspaper - *Savali* to his favorites. When government notices re disputes over titles or property are sent through the village mayor, family and personal connections often determines delivery or non-delivery.

Pulefa'amau over land in the Act is not clearly defined and thus a major cause of confusion. O'Meara (1995:151) asserts:

The court itself has not even recognised, at least publicly, that most of the 'customary lands' it oversees are no longer held according to orthodox custom and usage. Individual tenure is never mentioned in government reports (G W S, 1975; 1991). In spite of the court's implicit support for individual tenure in specific cases, extensive discussions with court officers elicited more official

denial and rejection of individual tenure than recognition and acceptance. Nevertheless, at least some of the high- ranking members of the Land and Titles Court who still reside in rural areas claim individual ownership of customary land in their private affairs, even though they are called on to defend orthodox custom in their official posts.

It would seem that the court is contributing to the manipulation and exploitation of *pulefa'amau*. The court's arbitrary role is perhaps unsurprising given the absence of definition and guidelines in the Act re customary land. As a result, tension within families continues unabated with long term repercussion on family, village and national economic development efforts.

CHAPTER 9

Conclusion

Relating to the Land and Titles Act 1981 and Its Impact on the Operation of the Land and Titles Court

This study shows that the court has and is performing an important role in retaining and servicing indigenous authority but the Act governing its functions particularly in relation to the notion of custom and usage is in need of reviewing in accordance with modern realities. When family dispute procedure over titles and lands relating to church, family and the village council fail, the court has become the last resort to provide settlement. A major component of that settlement process is based on what constitutes custom and usage and when definition is absent, the responsibility falls on the court as interpreter and arbiter of custom and usage.

The study provides case studies showing the limitation of the Land and Titles Act of 1981 in terms of what constitutes ‘custom and usage’. The Act limits the definition of ‘custom and usage’ to that ‘being in force at the relevant time’ and accepted by the people of Samoa in general.’ The Act was conceived to preserve the custom and usage but there are no uniform principles as to what those ‘custom and usage’ might be, how they might be ranked or weighted. Additionally, what is meant by ‘relevant time’, and which Samoans does the Act refer to? Does it refer to both *matai* and non-*matai* or *taule’ale’a* – a non-titled person? What about women? The mechanisms of determining acceptance of custom and usage remain unarticulated and undefined. In many respects, it is incongruence with the constitution since it does not include any conceptualization of human rights. The question arises, how might the incongruence between the constitution and the Act be reconciled, particularly when ‘custom and usage’ might have changed.

Moreover, contrary to the conventional definition of a court, the Land and Titles Court, throughout its history, has been handicapped from the lack of documentation of principles of custom and the development of a cumulative and public body of legal precedents. Former Registrar Galumalemana N. Schmidt observed that ‘the court decides each case on its own

merits but keeping with generally accepted custom and tradition.’ Vaai also argued that the Land and Title Act 1981 ‘lacks codified procedures’ causing much confusion to Samoans.¹²⁴ Schmidt shares similar views that the court has no obligatory set of legal precedence to guide its decision-making process.

Without this, attempt at critical definition and examination of custom and usage, as a more effective and sustainable basis of court decisions may prove futile. Instead of clear guidelines for its procedures and decision-making processes, the study identified evidence to show that the court is currently operating under an ‘Ad hoc system’. The ‘Ad hoc system’ arises from the changing perspectives of the Judges and the staff at different times on different cases. This is illustrated by villagers attempting to exercise their freedom of religion in Saipipi and Falealupo, the *pule* over the title Toelupe of Maile village and land at Leauva’a.

In practice the rule and procedures of resolving disputes is largely a matter of discretion for court officials by employing methods they consider minimizes confrontation and bring about speedy resolution. For instance, the use of documentation and mediation as ‘a form of alternative disputes resolution apart from facilitation of disputed matters to be brought before the Court’¹²⁵ is acceptable practice within the Lands and Titles Department. In such cases, the court staff attempts to settle differences as an independent party. These services are absent in the Act. Another difficulty arises from within the court staff. As local, they feel obligated to assist all parties resolve their dispute. Despite the noble intention, this gratuitous service does not always satisfy all parties whose wishes are for a court decision as a final settlement.

Because of the evident shortcomings of the 1981 Land and Titles Act, the role of the Court has become increasingly demanding in determining custom and usage in every case brought before it by ‘*aiga* - family, *nu’u* – village council, *lotu*- church and *itumalo*- village district. The decision makers have been the presiding bench, almost always Samoan *matai* with varied experiences and diverse background. They bring their various viewpoints on what constitutes

¹²⁴ Vaai 1999: 189.

¹²⁵ See the Land and Titles Annual Report, 2000-2001:4

custom and usage to bear on their decisions in the absence of a universally recognized view of custom.

When the judges are unable to find agreement, they often seek an opinion from the village council. In the cases such as the removal of a family from Saleilua and freedom of religion at Falealupo and Saipipi, the court's decision on disputes affecting the authority of village councils tended to favor the council. The village council is the ultimate village authority under which basic rights are subsumed and also to which the individual will have to return to live. It is clear from these proceedings that the rights of the individual are subjugated to the *pule fa'amalumalu* – overarching authority of the village council. Furthermore, basic individual rights are either subsumed under the collective right of the village council or ignored by the same council. In such cases, incongruence between the constitution and the Act remains a constant in the court.

Why is this issue of fundamental rights unresolved in the Land and Titles Court? Firstly, Samoan judges comprise senior and authoritative members of the village council and their contribution to the maintenance of village law and order are respected. Secondly, members of the parliament are *matai* and maintain close ties to their village for votes. Because judges and parliamentarians play major roles in their village and district affairs, they tend to give little weight to constitution in matters relating to fundamental rights. In addition, many judges chair village councils who determined who gets voted

In this context, if the Judges and the parliamentarians are seen to favour the rights of an individual, the village council may withdraw their support. In addition, the village council may evict their families from the village and even impose sanctions against them. The power of the village council was enhanced by the Village *Fono* Act 1990 resulting in the Court's decision tending to favour village council decisions.

Many had silently cherished the hope that the two competing systems would somehow blend by osmosis or divine intervention. This has not been the case and the result is political, economic, social and cultural ambivalence. Within a tradition of oral history is nurtured a cesspool of cultural inconsistencies, breeding inefficiencies, abuse and corruption. In the wake of these longstanding contradiction, ideologies and practices, tension between individualism and

collective entities such as 'aiga and village council often breaks out in brutal form. The outcome is a morally confused and dysfunctional society.¹²⁶

The application of *pulefa'amau* to customary land is a cause of much confusion in the Land and Titles Court. The increasing number of application for *pulefa'amau* reflects a growing trend among customary landowners to transfer land from the category of customary land to individual ownership. This trend began in 1920s and seems to have accelerated with the increase of a monetary economy and urbanization such as the new township in Salelologa.

Since its establishment in the 1920s, *pulefa'amau* of customary land has become the cause of increasing tension in families and villages. There are tension between a *matai* and his/her family, between siblings, between a family and the village council. At the heart of the problem is the question of whether the award of *pulefa'amau* implies individual ownership exclusive of the extended family. In some cases the award of the *pulefa'amau* has been interpreted as having individual authority over the land even to the extent of selling it such as in the case of Fataloa land in the Salelologa Township.

As noted above, the constitution forbids the sale of customary land. It can only be leased. Many of the applications are processed, approved and signed by Judges within the department without necessarily securing a proper land survey by qualified surveyors. Many *pulefa'amau* are registered by different *matai* over the same land. This often results in multiple registration of *pulefa'amau*. The misinterpretation of sections 9 and 14 of the Land and Titles Act 1981¹²⁷ plus the undermining of the context of the *pulefa'amau* by the Land and Titles Court seems to be the root cause of the problem. The problem is that the Act has not kept pace with change in society and been superseded by the practice of the Land and Titles Court.

Another crucial conflict is Government land granted to a Samoan village such as in Leauva'a.⁷ In such cases, the government land became customary land under the authority of the village council. However, the current problem arises when the *pule* of the land is disputed; the Court

¹²⁶ Tuimaleali'ifano 2001: 325.

¹²⁷ Section 9 of the 1981 Act defines the meaning of *pulefa'amau* 'as the ownership of customary land and or control of any Samoan title either by a person, any Samoan title, village or district.' However, under section 14, *pulefa'amau* is defined in term of family title but mute on customary land.

See Chapter six.

favours the principal *matai*. If the heirs of the first occupants of land are at loggerhead with the principal *matai* they are urged to respect the authority of the principal *matai*. Since the parcel of land was a government grant the Court should obtain relevant information from the Ministry of Environment and Natural Resources at the Division of Land and Survey such as the nature of its tenure and whether the village council still has the *pule* over it during its sub division.

It is argued here that the undefined and unarticulated meaning of custom and usage is the major contributor to longstanding tensions within virtually every Samoan family and village. Every family and village council will have their own understanding and interpretation of custom and usage, and without a clearly defined set of criteria for the court to base their collective decisions, everyone will continue to hold on tenaciously to their own interpretation.

Of major concern is the disparity between the constitution and the Act. Fundamental rights are constantly brought before the Court by individuals who often correctly claim that their basic human rights have been threatened and violated by the village councils and the court using the land and Titles Act 1981. Furthermore, the authority of village councils under the 1981 Act has been strengthened by the Village *Fono* Act 1990. By reinforcing the authority of village councils, the prospect of reconciling the disparity between Constitutional rights and the Act seems dim. To reduce tensions, the thirty two (32) year old Act of 1981 is in need of review.

The provision for freedom of religion was framed by European Constitutional Advisors (Colin Aikman & J.W Davidson) with the assistance of Samoans. It seems that Samoans believed that only three (3) mainline churches, Congregational Christian Churches of Samoa, Methodist and Roman Catholic Church would satisfy religious instruction and spiritual needs of Samoa. However, they did not know that religious concepts in the Constitution are not confined to Christianity but includes other religious institutions such as Islam and Hindu to name a few.

New religious movements have been introduced to the country such as the case of Falealupo and Saipipi. The fundamental rights of every Samoan citizen are protected by the Constitution, the Supreme law of the land. But the Land and Titles Court has indicated that such rights are not absolute for they are subject to national security, public order, health or morality. The Court in dealing with these delicate issues seems to rely on the majority decision of the village councils. When issue of basic rights clash with custom and usage, elements of natural justice often do not get a fair hearing.

The backlog of cases is further evidence of the need to review. The number of case pending at the Court of Appeal from 1994 to 2001 is approximately 1501. In this case, the backlog aggravates the existing tensions and many have abandoned the development of agriculture and community infrastructure because of the growing uncertainty. In such cases, the Government should perhaps decentralize the Land and Titles Court and create more district courts. It is perhaps easier for families and villages to solve their disputes in accordance with their own localized custom. Before the colonial government was established in 1900 every *aiga, nu'u* and *itumalo* was organized under a decentralized authority structure. This decentralized institutional nature of the Samoan structure is still in operation and used by the churches. Furthermore, in reviewing the 1981 Act, each district Court should be provided with clearly defined guidelines for decision making and provisions made for regular review of its operation. As well as making the court machinery more accessible to the rural public, the decentralization should also speed up the administration of justice, and save time and resources.

The study concludes that customary land and chiefly titles are *measina* (treasures) that every *aiga, nu'u, lotu* and *itumalo* preserves and many have lost their lives in preserving their rights to title and land. Many families have been divided because of tension amongst themselves over outdated guidelines to resolve their customary land and family titles. Much of this tension is due to the weaknesses in the Act with consequent adverse effects on its practices, procedures and decisions making processes.

Samoans are facing many challenges. Without amendments, structural reforms and the incorporation of people's participation, the Land and Titles Court is under threat of being

made redundant as many parties either resort to other court such as the Magistrate and the Supreme Court or take the law into their own hands. This poses the major challenge and calls for structural, legislative, institutional and procedural reforms in the Land and Titles Act. The court has worked well for Samoa but without review, it has the potential to inflict terror in Samoan society. Some would say that this is already happening with increasing incidences of banishment, property destroyed, suicide, child abuse, crime and the continuing bleeding of its young people overseas. Unless, appropriate legislative instrument such as the 1981 Act is reviewed and updated, and the meaning of custom and usage is clearly defined and regularly tested, the Court is in danger of becoming a drag on development rather than as an instrument of social justice and economic development. This humble study is just a beginning and I hope that it assists with further research on this issue crucial to all Samoans.

Bibliography

- Aiavao, U. 1993. 'Death in the Village: The execution of Faitala Nuutai Mafulu stunned the islands, the clash of modern and traditional attitudes and the powers from the days of old that can still rule today,' in *Island Business Pacific*, November
- Alailima, F. and Vaiao, L. 1994. 'Restructuring Samoa's Chiefdom,' in Crocombe, R. G. et als. (eds). *New Politics in the South Pacific*, Institute of Pacific Studies, University of the South Pacific, Suva.
- Auelua, E. and Taulapapa A. 1988. 'Land and Chiefly Titles Court of Western Samoa,' in Powles, C.G. and Pulea, M. (eds). *Pacific Courts and Legal System*, University of the South Pacific, Suva,
- Cole, R. 1986. *Land Policies and Issues in the South Pacific Islands*, Australia Working Paper No. 86/12: The Australia National University, Canberra.
- Corrin, C. J. et als. (eds). 1999. *Introduction to South Pacific Law*, Cavendish Publishing.
- Crocombe, R. G. 2001. *The South Pacific*, Institute of Pacific Studies, University of the South Pacific, Suva.
- Crocombe, R. G. 1989. *The South Pacific: An Introduction*, Institute of Pacific Studies, University of the South Pacific, Suva.
- Crocombe, R. G. & Meleisea, M. 1994. *Land Issues in the Pacific*, Christchurch. Macmillan Brown Centre for Pacific Studies and Institute of Pacific Studies, University of the South Pacific, Suva.
- Davidson, J. W. 1967. *Samoa mo Samoa: The Emergence of the Independent State of Western Samoa*, Oxford University Press, Melbourne.
- Enari, S. 1982. 'A Christian Reflection on the Customary Land Tenure System and Modern Development in Samoa,' Thesis (MTh), Pacific Theological College, Suva.
- Epati, A. S. 1995. 'Samoa Notions of Cultural and Social Justice: Conflicts with Western Law Systems,' in F. McElrea (ed). *Re-Thinking Criminal Justice*, Legal Research Foundation, Auckland.

- _____, A. S. 1988. 'Lawyers and the Customary Law Court,' in Powles C.G. and Pulea, M. (eds). *Pacific Courts and Legal Systems*, University of the South Pacific, Suva.
- Fepuleai, S. T. 'E mamae le Tava'e i ona Fulu: A Study of the impact of the Congregational Christian Church of Samoa on Vaigaga social structure,' Thesis (MA), Massey University, New Zealand
- Fox, J. W. & Cumberland K. B. 1962. *Western Samoa Land, Life and Agriculture in Tropical Polynesia*, Whitcombe and Tombs, Christchurch.
- Gardner, L. 1965. 'Gautavai: A Study of Samoa Values,' Thesis (PhD), University of Hawaii, Honolulu.
- Gerth, H. and Mills, C.W. 1953. *Character and Social Structure*, Harcourt, Brace and Company, New York.
- Gilson, R. P. 1970. *Samoa 1830 – 1900: The Politics of Multicultural Community*, Oxford University Press, London.
- Henry, F. 1980. *Samoa: An Early History*, Department of Education, American Samoa, Edward Enterprises, Honolulu, Hawaii.
- Huffer, E. and So'o, A. (Eds). 2002. *Governance in Samoa*, Australia National University, Australia and University of the South Pacific, Suva.
- Hoebel, E. A. 1954. *The Law of Primitive Man*, Harvard University Press, Cambridge.
- Holmes, L. D. 1971. 'Samoa: Custom versus Productivity,' in R Crocombe (ed.). *Land Tenure in the Pacific*. Oxford University Press, Melbourne.
- Holmes, L. D. 1974. *Samoan Village*, Rinehart and Winston, New York.
- Holloway, I. 1997. *Basic Concepts of Qualitative Research*, Blackwell Science Ltd, Oxford.
- Kamu, L. 1996. *The Samoan Culture and the Christian Gospel*, University of the South Pacific, Suva.
- Keene, T.P. D. 1978. 'Houses without Wall: Samoans Social Control,' Thesis (PhD), University of Hawaii, Honolulu.

- Keesing, F. M. 1934. *Modern Samoa: Its Government and Changing Life*, George Allen and Unwin, London.
- Kramer, A. F. 1994. *The Samoan Islands: An Outline of a Monograph with Particular Consideration of German Samoa*, Augustine Kramer; translation by Theodore Verhaaren. Polynesian Press, Auckland.
- Le Tagaloa, A. F. 1996. *O Motugaafa: Samoa Social Life and Customs*, Le Lamepa Press, Apia.
- Le Tagaloa, A. F. 1992. 'The Culture and Government,' in Crocombe, R. G. et al., (eds). *Culture and Democracy in the South Pacific*, Institute of Pacific Studies, University of the South Pacific, Suva.
- Liuaana F. B. 1993. 'Tali i le Lagi sou Malo: Samoan Christians and Samoan Politics, 1830 – 1899', Thesis (MTh), Pacific Theological College, Suva.
- Marsack, C. C. 1958. *Notes – On the Practice of the Court and the Principles adopted in the Hearing of Cases Affecting (1) Samoan Matai Titles; (2) Land held according to Customs and Usage's of Western Samoa*, Government Printer, Apia.
- Marsack, C. C. 1964. *Samoa Medley*, Robert Hale, London.
- Masterman, S. 1977. *Village Life in Western Samoa*, School Publication Branch, Department of Education, Wellington.
- Meleisea, M. 1987a. *Lagaga: A Short History of Samoa*, University of the South Pacific, Suva.
- Meleisea, M. 1987b. *The Making of Modern Samoa*, University of the South Pacific, Suva.
- Mead, M. 1963. *Coming of Age in Samoa*, Penguin Books Ltd, Middlesex.
- Nan (Sister), 1998. *The Message of St Francis*, Harper Collins Religious, Melbourne.
- Nayacakalou, R. R. 1960. 'Land Tenure and Social Organization in Western Samoa,' in *Journal of the Polynesian Society*, Vol, 69, No2:104 -122.
- O'Meara J. T. 1987. 'Samoa Customary Individualism,' in Crocombe, R. G. (ed), *Land Tenure in the Pacific*, University of the South Pacific, Suva.

- O'Meara, J. T. 1995. 'From corporate to individual land tenure in Western Samoa,' in R.G. Ward and E. Kingdom (eds), *Land, Custom and Practice in the South Pacific*, Cambridge University Press, Cambridge.
- Patea, S. M. 2002. 'Samoa: South Pacific Land Tenure Conflict Symposium,' *Regional Representative Report*, FAO/USP/RICS Foundation, Samoa Department of Lands Surveys and Environment. University of the South Pacific, Suva.
- Powles, C. G. and Pulea, M. (eds). 1998. *Pacific Courts and Legal Systems*, University of the South Pacific, Suva.
- Sapolu, T. F..M. 1988. 'Adjudicators in Western Samoa,' in Powles, C.G. and Pulea, M. (eds). *Pacific Courts and Legal Systems*, Institute of Pacific Studies, University of the South Pacific, Suva.
- Schmidt, G. N. 1994. 'The Land and Titles Court and Customary Tenure in Western Samoa,' in R. G. Crocombe & Meleisea, M. (eds). *Land Issues in the Pacific*, MacMillan Brown Center for Pacific Studies and Institute of Pacific Studies, University of the South Pacific, Christchurch/Suva.
- So'o, A. 1996. 'O le fuata ma lona lou: Indigenous institution and democracy in Samoa,' Thesis (PhD), Australia National University, Canberra.
- Tcherkezoff, S. 2000. 'Are the *matai* 'out of time'? Tradition and Democracy: Contemporary Ambiguities and Historical Transformation of the Concept of Chief,' in So'o, A. and Huffer, E., (eds). *Governance in Samoa*, Asia Pacific Press at Australia National University and Institute of Pacific Studies, University of the South Pacific, Suva.
- Thomas, P. 1984. 'Western Samoa: Custom Change and Constraints in Relation to Land Right, Registration and Productivity,' in B. Acquaye & R. G. Crocombe (eds). *Land Tenure and Rural Productivity in the Pacific Islands*, Institute of Pacific Studies, University of the South Pacific, Suva
- Tiffany, S. W. 1974. 'The Land and Titles Court and the Regulation of Customary Titles Successions and Removals in Western Samoa,' in *Journal Polynesian Society*, Vol L (3).
- Tofaeono, A. 2000. *Eco – Theology: Aiga the Household of Life: A Perspective from Living Myths and Traditions of Samoa*, Erlanger Verlag fur Mission und Okumene. Germany.

- Tuimaleali'ifano, A. M. 1990. *Samoans in Fiji: Migration, Identity and Communication*, University of the South Pacific, Suva.
- Tuimaleali'ifano, A. M. 1997. 'Aganu'u ma Agaifanua Fa'a Samoa: Custom and Usage in Samoa: A history and process of a tama'aiga title dispute in Falelatai,' Thesis (PhD), University of the South Pacific, Suva.
- Tuimaleali'ifano, A. M. 2001. 'Aia Tatau ma Afioga Tutasi: Aiga versus Tama a Aiga: manipulation of old and new practices,' an MP for Falelatai and Samatau in Samoa's 2001 election,' in *Journal of Pacific History*, Vol. 36, No 3, OOP, Melbourne. Carfax Publishing, Taylor and Francis Ltd.
- Turner, G. 1884. *Samoa: A Hundred Years Ago and Long Before*, Macmillan and Company, London.
- Tuu'u, Misilugi Tulifau Tofaeono. 1999. *Malietoa of Samoa: the crown and titles*. Tugaula Publication, Wellington, New Zealand.
- Unasa L. F. V. 2000. 'Local Government in Samoa and the Search for Balance,' in So'o, A. & Huffer. E. (eds). *Governance in Samoa*, National University of Australia & Institute of Pacific Studies, University of the South Pacific, Suva.
- Vaai, S. 1999. *Samoa Faamatai and the Rule of Law*, National University of Samoa, Apia, Samoa.
- Te'o, T. Faletoese, T.E. and Kirisome, F. L. 1981. *O le Tusi Fa'alupega o Samoa*, Apia, Malua.
- Ward, R. G. and Ashcroft, P. 1998. *Samoa: Mapping the Diversity*, Institute of Pacific Studies, University of the South Pacific, Suva and National University of Samoa, Apia.
- Ministry of Women Community and Social Development, Village Profiles of Savai'i & Upolu Edition, Government of Samoa, June, 2004

Government Publications

Department of Economic Development Western Samoa, 1969. *Western Samoa: The Land – Its People, The Way of Life, Heart of Polynesia*, Government Printer, Apia.

Department of Land and Titles Court, 2002. *Department of Land and Titles Court, Annual Reports of 1994 –1999*, Government of Samoa, Apia.

Department of Land and Titles Court, 2002. *Department of Land and Titles Court, Annual Reports of 2000-2001*, Government of Samoa, Apia.

Department of Land and Titles Court, 2003. *Land and Titles Court Bench Book: Tusi Taiala*, In collaboration with the Samoan National Judicial Education Committee, Australia, New Zealand and Canada, Apia.

Government of Western Samoa, 1960 *Constitution of the Independent State of Western Samoa*, Government Printing Press, Apia.

Government of Samoa, 1981. *Land and Titles Act 1981*, Legislative Assembly, Government Printing Press, Apia.

Government of Samoa, 1993. *Village Fono Act 1990*, Legislative Assembly, Government Printing Press, Apia.

Government of Samoa, 1995. *Internal Affairs Act 1995*, Government Printing Press, Apia.

Government of Samoa, 2004. *Village Profiles of Savaii and Upolu Edition*, Ministry of Women Community and Social Development, Government Printing Press, Apia.

Department of Land and Titles Court

L.C 10604 / 1064 P1 – 2nd April 2004. Removal of Fanene Anitele'a and his sisters from Saleilua, Falealili.

L.C 1045 P1 / 1045 P2 / 1045 P3: 6th February 1998. Disputed Pule over the title Toelupe of Malie.

L.C 5829. 1978, 1985: Title Seaga of Malie.

L.C 616. 1921, L.C 2534 P6/P7. 1997: Title Maualaivao.

L.C 8063 P2 / L.C 8063 P3 Title Fa'amausili.

L.K. 95, 1906: Land Lalau

L.C 1888, 1980. Land Salatoa

L.C PV.55/72: 1972 Land Falefasa

L.C 555. Land Tauaumoa.

L.T.C 2697 / L.C 1045 P1 / 1045 P2 / 1045 P3: 12th March 1999. Title Toelupe

L.C 9522 / 9522 P1 – 28th July 1995. Disputed Pule over the 10 gafa (10 fathoms, portion of land) called Maotasa of Leauva'a.

L.C 9522 / 9522 P1 – 24th October 1995. Land Maotasa, Leauva'a

L.C 9522 / 9522 P1 – Land Maotasa, Leauva'a

L.C: Land of Ali'i and Faipule of Siumu at Vailima. Court Grant 416 Parcel 161 / 17 Flur VII Upolu.

L.C 10523 / L.C 1053 P1 Land of Ali'i and Faipule of Salamumu: Court Grant 260 Parcel 168, 364 - 366.

Tuasivi Registry (Savaii).

A.L.C 4140 / 4140 P1 – 16 July 1987. – Removal of the Bible School from Falealupo.

A.L.C 4140 P2 / 4140 P3 – 23rd March 2000. Removal of the Bible Class at Falealupo

ALC4140 P4 / ALC P5 / ALC P6 – 7th September 2000. Removal Bible Class at Falealupo.

A.L.C 4140 P4 / 4140 P5 / 4140 P6 - 28th February, 2001. Bible class, Falealupo

A.L.C 4140 P4 / 4140 P5 / 4140 P6 - 22nd January 2002. Bible Class Falealupo

A.L.C 5103 / 5103 P1 – 14th September 1995. Bible School Being set up within Saipipi.

A.L.C 5130 / 5130 P1 – 13th March 1996. Bible class at Saipipi

A.L.C 5130 / 5130 P1 – 3rd May 1996. Bible class Saipipi

A.L.C 5713: Pulefa'amau: Land Fataloa of Salelologa, Savai'i.

A.L.T.C 12/8: Pulefa'amau: Land Fataloa of Salelologa, Savai'i.

Newspapers

1. Government of Samoa, 1993. *Savali*: 26th November.
2. Government of Samoa, 1998. *Savali*: 30th November.
3. Government of Samoa, 1999. *Savali*: 30th January – 21 December.
4. Government of Samoa, 2001. *Savali*: 30th June.
5. Government of Samoa, 2002. *Savali*: 2nd August.
6. Samoa Observer, 2005. 22nd April.

Appendix A

QUESTIONNAIRE SHEET

Appendix A.1: In Samoan Version

Afioga/Susuga e,

I le ava ma le faaaloalo, ua ou talosagaina ai sou finagalo faaalua i Fesili ua tuuina atu i lalo e faatatau lea i sou silafia ma sou manatu i galuega faatino ma faaiuga fai i le Faamasinoga o Fanua ma Suafa o Samoa (Mulinuu & Tuasivi).

Ua ou talosagaina sau fesoasoani ona o lo’o faatino ai le pepa e faatatau i le Faamasinoga o Fanua ma Suafa ini auala e mafai ona faaleleia ai le auaunaga mo le puipuia o measina a aiga, nu’u ma afioaga e ala lea i Fanua ma Suafa matai o Samoa.

SINI AUTU

O le Sini Autu o lenei Pepa e faapea, “O le Faamasinoga o Fanua ma Suafa ia faia ana faaiuga i le manino, sa’o lelei, ma aua ne’i faaituau. Ia vave ona faataunu’uina ina ia faamalieina Itu Faamasinoga uma e uiga i Fanua Fa’aleaganuu ma Suafa matai ina ia maua ai le nofo filemu o aiga, nuu, Itumalo ma Ekalesia i totonu o Samoa.

Ia mafai ona iloiloaina galuega faatino a le Faamasinoga o Fanua ma Suafa ma aafiaga o ana faaiuga fa’a - Fa’amasinoga i Fanua Faaleaganu’u ma Suafa Matai.

O le Fesili 1.a: - O a ni auala taua ma onomea e mafai ai ona taunu’u i se tulaga mo’omia ma lelei ia Sini Autu o le Fa’amasinoga o Fanua ma Suafa e pei ona taua i luga?

Tali:-

e: Afai sa e auai i se fa'amasinoga o se fanua poo se suafa a lou aiga sa e manino ma malamalama i taimi o Suesuega a Alii ma Tamaitai o le Fa'amasinoga e tusa o agaifanua ma aganu'u o sea mataupu sa suesueina.

1.

Afai e Ioe faamatala mai

Tali:-

Afai e leai faamatala mai:

Tali:-

1.i: Afai e te Ioe faamatala mai:

Tali:-

2: I sou manatu, aisea ua anoanoai ma tele ai mataupu a aiga e uiga I Fanua ma Suafa ua tuuina atu i luma o le Faamnasinoga o Fanua ma Suafa i lea tausaga ma lea tausaga?

Tali:-

3: O le a le mafuaaga o le tula'i mai o le tele o finauga i totonu o aiga, nuu ma afioaga aemaise i Ekalesia (tulaga o lotu e faatuina i totonu o se afioaga) faapea fanua ma suafa matai i Samoa?

Tali:-

4: O le a sau matau iai o talafeagai ma amiotonu suesuega a Alii Fa'amasino ma Alii Fa'atonu i fa'aiuga o Fa'amasinoga o Fanua ma Suafa o lo'o latou faia?

Tali:-

5: Aisea i lou silafia ua umi ai ona ta'atia/tolopo se mataupu e suesueina i luma o le fa'amasinoga?

Tali:-

6: O le a sou finagalo, o le Faatuina o le Faamasinoga o Fanua ma Suafa ua fa'aletonu ai le pulega o aiga (pule a le matai), aemaise le pulega mamalu a Alii ma Faipule i totonu o nuu ma afioaga aemaise le tulaga o fanua fa'a-le-aganu'u ma suafa matai.

Tali:-

7: O le a sou manatu i le tulaga o loo iai le faatinoina o galuega ma faaiuga fai a le Faamasinoga o Fanua ma Suafa.

Tali:-

8.a: O le a sou manatu e fia maua iai sou finagalo manino, afai ua faatoai sau mataupu i le Faamasinoga o Fanua ma Suafa i Mulinuu ma Tuasivi, o le fesili, o e malamalama lelei i le faatinoina o galuega a le Faamasinoga?

Afai e te Ioe faamolemole ia faamatala mai:

Tali:-

8.e: Afai e Leai fa'amolemole ia faamatala mai:

Tali:-

9: O le a le taua o tala tusia, o gafa, ma talatu'u o loo tuuina atu e itu Faamsinoga i luma o le Faamasinoga?

Tali: _____

10.a: Faamolemole se'i aumai sou finagalo ini auala e faaleleia ai le auauanaga o le Faamasinoga o Fanua ma Suafa mo le puipuia o measina i Fanua Faaleaganuu ma Suafa matai o Samoa.

Tali:- _____

E avatu le agaga o le faafetai mai le taele o lo'u fatu i lou sao i lenei galuega aemaise mo lenei auauna fa'atauva.

Ia alofagia e le Atua le faamoemoe aua le malu puipuia o measina a Samoa i ana agaifanua ma lana aganuu.

Faia ma le ava tele

Faafetai

Telea Kamu Tapuai Potogi

Appendix A.2: In English version

With due respect I wish to provide the following Questionnaires in regarding the Impact of the Land and Titles Court Decisions and the Court’s activities or procedures both at Mulinu’u (Upolu) and Tuasivi (Savaii)

The purpose of the Questionnaire/Study provided in order to seek some guidelines and recommendations for the improvement of the delivery services of the Land and Titles Court to secure/protect files and improve its decisions making process in the Department of the Land and Titles Court. It is not only that but to evaluate the working of the Land and Titles Court and impact of its judgments on Samoan society

Purpose of the Questionnaire:

The purpose of the Questionnaire is to get some valuable information from the public views or the Samoan views in order to help the Land and Titles Court longstanding problems (decisions that widespread internal security implication) could be minimized and resolved unless such decisions over contested *matai* titles, land issues and religion are fairly judged, justly assessed and honorably truthful within a timely manner. It not only to satisfy both parties disputed on customary matters but to maintain peace and order within *aiga*, *nu’u* and *lotu* in the village.

Question 1- What are some relevant ways/ideas that make possible to achieve the objectives or hypothesis of the Land and Titles Court.

Answer:-

Question 2.a: Do you think it is clear to the Land and Titles Court that its decision making is fair and justify on issues concerning *matai* titles, *lotu* and customary land?

If you say *yes*, please explain:-

Answer:-

If you say *no* then please explain:

Answer:-

Question 3. From your own perspective/opinion – Why there are a lot of families cases on *matai* title and customary land sought the Land and Titles Court as a last resort?

Answer:-

Question 4. What are the reasons and why there a lot of disputes on *matai* titles, land tenure and new church in the village apart from the old religion already established in the village?

Answer:-

Question 5. Do you think that the Samoan Judges and Assessors of the Land and Titles Court in terms of their court deliberations and decision making process over *matai* title and customary land are fairly and consistent?

Answer:-

Question 6. In your opinion, why a case or cases at the Land and Titles Court remains so long or delay to settle families’ disputes and why many court decisions are appealed?

Answer:-

Question 7. Do you think the establishment of the Land and Titles Court is an instrument/institution thus disturb peace and harmony in the *aiga* (authority of the *matai*) especially the authority of the village council.

Answer:-

Question 8. What do you think about the Land and Titles court procedures and its jurisdictions?

Answer:-

Question 9. If you lodged a complaint or a petition to the Land and Titles Court concerning any issue on *matai* title or customary land. Do you really understand the court procedure and jurisdiction of the court?

If your answer is *yes* then please explain:

Answer:-

If you say *no* then please explain:

Answer:-

Question 10. Why oral traditions, myths, legends and genealogy are so important in the Land and Titles Court.

Answer:

Question 11. Could you provides some ideas to improve the delivery service, court proceedings and jurisdiction of the Land and Titles Court in order to achieve its vision and mission and to secure *matai* titles and customary land of Samoa?

Answer:-

I acknowledge my sincere thanks to your assistance throughout this work by providing valuable insights throughout this questionnaire in order to secure and protect *measina* (treasures) of custom and usage of Samoa at the Land and Titles Court

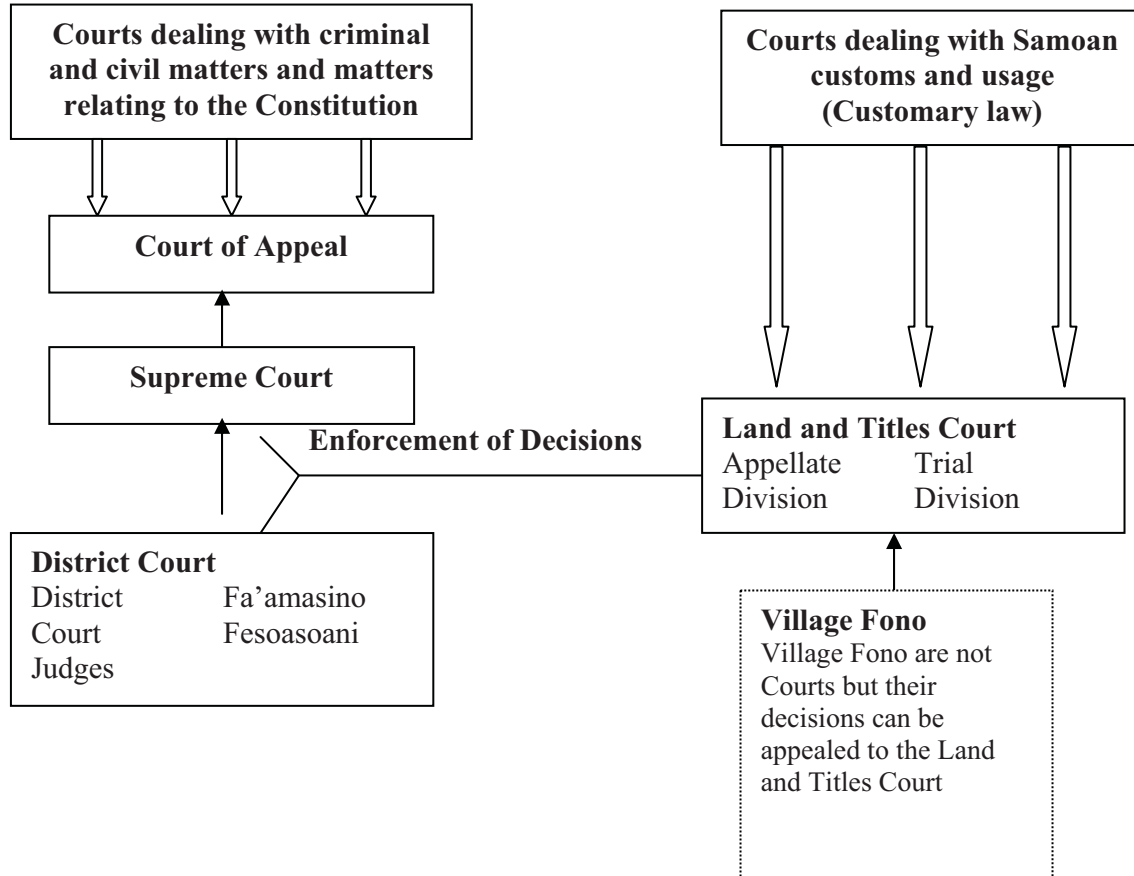
Faafetai tele lava

Telea Kamu Tapuai Potogi

Appendix B

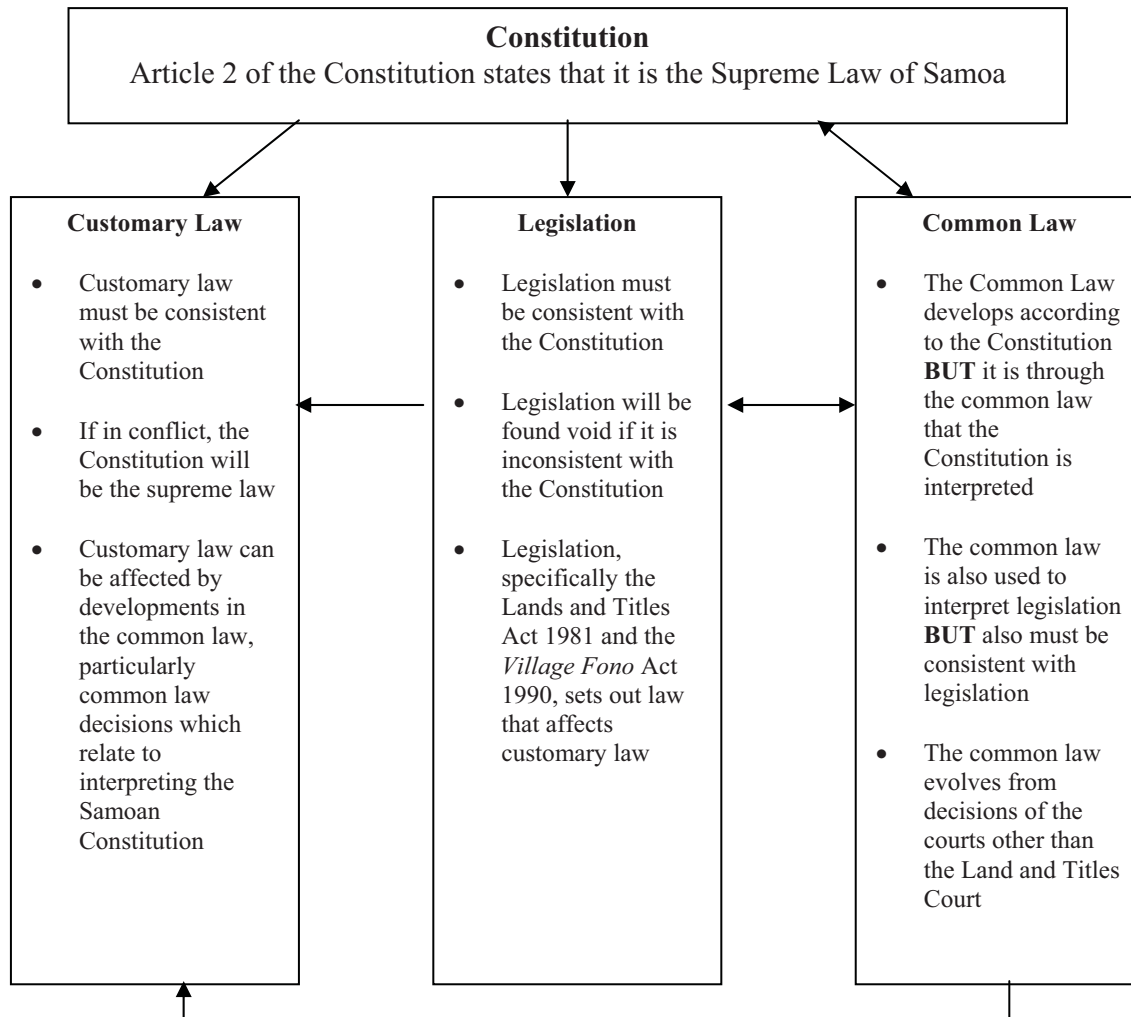
STRUCTURE OF THE SAMOAN COURTS

Appendix B 1: The Structure of the Samoan Courts



Source: Land and Titles Court Bench Book; 2003:9.

Appendix B 2: Relationship of different Sources of Law in Samoa



Appendix B 3: Duty of the Registrar over petition lodged at the court

Within 7 days of traditional appointment ceremony, new appointee must give notice in writing to *pulenu'u* (village mayor), and to the Registrar. Within 14 days of learning of a traditional appointment ceremony, the *pulenu'u* must confirm that the title belongs to the village, and record the particulars of the appointment (a copy of which must be kept for 10 years). A copy is given to the appointee and the original is forwarded to the Registrar. The Registrar publishes the notice of the appointment in 2 consecutive issues of the Savali (Government newspaper) including a notice fixing the time of the case. In section 23 (4) and 16 notify that, the objections to the appointment can be lodged after 3 months from date of first publication.

Appendix B 4: Duty of the Registrar

The Registrar arranges for the service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing as stated by section 45. The Registrar publishes notice of sitting in the *Savali* (Government newspaper) at least 21 days before sitting commences, stating the time and place; names of parties to each petition; and nature of relief sought as mentioned in section 40, 41 of the Act. He/she consults the President of the Land and Titles Court and sets the time and place of the sitting – section 39 & 42(5). Any interested Samoan – section 34 (2); any Samoan who may be affected can lodge his objection about the dispute matter- section 16 (2). In the court hearing, the bench comprises President or Deputy President and at least 4 Judges and Assessors and at least 2 of whom are Judges - section 35. This will be in proceedings involving two or more parties. (Land and Titles Act 1981).

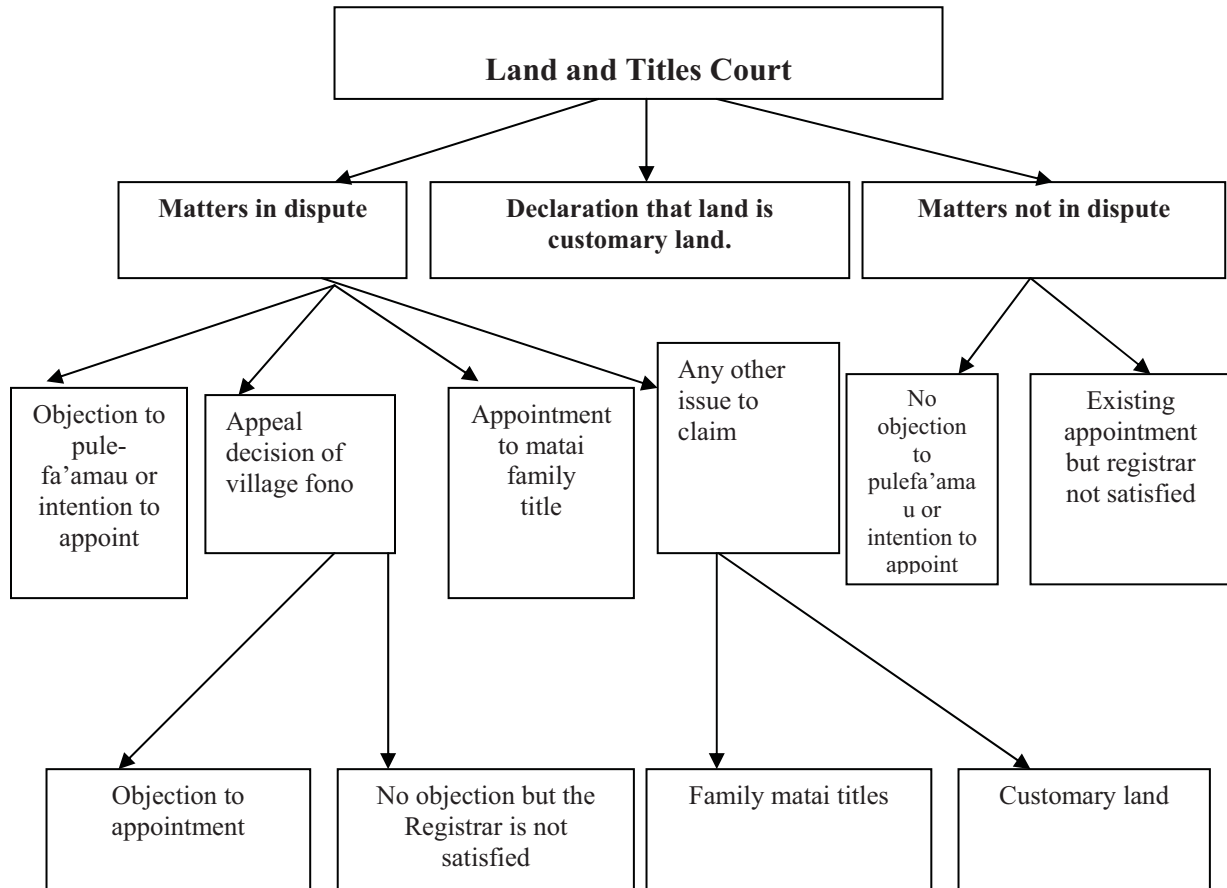
Within 1 month of receiving the notice, the 'deleted' person notifies the Registrar that he/she wishes to petition the Court against the deletion of his/her title orally or in writing. The Registrar prepares a petition and has it signed by the petitioner. The petition is between the Registrar and the affected person. At the Courthouse the Registrar and the 'deleted' person will deliberate before the Court about the matter as stated by section 22 (8) and (9) of the Act. The President of the Land and Titles Court is sitting alone and the Court can make any orders or declarations in relation to family titles and customary land as mentioned in section 34 (2) of the Act. This will be in proceeding involving a single party.

Appendix B 5: Objection over customary land in doubt

Land and Titles Act 1981: Section 9 (6) and 34 states that any person who objects to the making of an order under this section 9 & 34. Any interest in freehold land in question, the Court may adjourn the proceedings to enable that person to make a claim in respect of the said land under the Land and Titles Investigation Act 1966 and, if such application is made, the Court may further adjourn the proceedings as it thinks fit to await the decision of the Land Titles Investigation Commission (Land and Titles Act 1981: 8).

Appendix B 6: Jurisdiction of the Land and Titles Court (LTC)

This diagram shows the matters that may be heard by the Land and Titles Court



Source: Land and Titles Court Bench Book, 2003:45.

Appendix B 7: In the Land and Titles Court Sitting

The Land and Titles Act 1981:18-19 asserts that the Court consists of the President or Deputy President and at least four Judges and Assessors. As clarified by section 35 of the Act that the court shall not exercise any jurisdiction to discuss the matter unless the President or Deputy President and at least 2 Samoan Judges and least one Assessor are present. (The number of Samoan Judges and Assessors shall not be less than 4 for the hearing of any case. The composition of the Court for the hearing of any case shall not be changed until the Court has given its final decision.

Appendix B 8: Major reasons of adjourned cases

1. Petition to be published

Most of the petitions that cause cases to be adjourned are those seeking either the *pule* (authority) *suli moni* or *suli faavae* (true heirs). For example, the dispute in the Court is about the appointment of a person to the family *matai*. If anyone of the parties wishes to find the *pule* and *suli moni* of the *matai* title, the Court will decide to adjourn the case. Thus, the Court orders other disputing parties to file the petitions about the *pule* and *suli moni* to the Department (LTC). The petitions for the *pule* and *suli moni* of the title must be advertised in the *Savali* within 3 months. The Department sets up the date and time for the hearing. In fact it will take another few months or a year to advertise such petitions in the *Savali*, depending on the Department's schedule of cases.

2. Adjournment Fee

The Deputy President is responsible for granting an Adjournment fee upon an application by a party when he/she thinks it is relevant. Most of these applications are from people who live overseas. Some are members of the disputing parties who have not prepared for the case often asks the Court to adjourn the case, as they are ready to pay the Adjournment fee. The problematical issue is that many complaints are lodged to the Registrar or even the President by the people who come from overseas and those parties were ready for the case. They argued that the court should not be adjourned because they have left their work on which they depend for survival for a few days or a week. Not only that they spend a lot of money for airfares and provided money to the public especially for their *tapuaiga* (village supporters) during the Court hearing.

3. Parties not turning up

When parties do not turn up for the case, some complain that they did not receive any summon from the office. The Office Mail Deliverer reveals that they sometimes find it very hard to find party members' place of residence especially in new settlements such as Vaitele tai/uta and Si'usega. Families from rural villages both in Upolu and Savai'i are settling these areas.

4. Medical Certificates

A case can be adjourned if the leader of any party is ill and confirmed by a medical certificate. However, the summon issued for each party says if a leader could not attend the hearing because of illness or other reasons he/she should nominate someone by a letter to the court to be a leader of their party. But summon is not effective sometimes if the leader of the party who is ill is the only *matai* of the family. In the Land and Titles Court only the *matai* can represent his/her family in the case. Unless there is permission from the Court plus the supportive letter from the *matai* and the extended family, a nominated heir (she/he) could present the petition in the Court.

5. Objection to Judges

The summons states that if the parties object to a *fa'amasino Samoa* they must submit names of Judges and the reasons of their objection within 14 days before the hearing. However, such an order reveals that the summons is not adhered to by the parties and the judges. For instance, objections by the parties are sent to the Department two or three days before the hearing. To this extent, objection of *fa'amasino Samoa* always occurs when a party is suspicious that he/she is related to one of a disputing party. Another objection occurs when a judge was sitting in their previous case that they have lost. As a result the case will be adjourned.

6. Parliament Meeting and Government Duties

Some leaders of the disputing parties are members of the Parliament. When the case is being heard on the same day of the Parliament meeting they apply to the Court for adjournment. Moreover, people involved in Government trips also use the same reason.

7. Unfinished cases and Small Numbers of *Fa'amasino Samoa*

Some cases are adjourned because of the continuation of previous cases. This is because some cases can take more than one week to proceed if a case contains numerous petitions and parties. The problem arises because the court comprises of 15 Samoan Judges who are working in the Court to hear judgment of family disputes.

8. Related Case is Pending at the Court of Appeal

A related case is pending at the Court of Appeal is another reason of adjournment. For example if a case about the *pule* of the land or lesser titles (mostly *tulafale* title) is being heard at the Land and Titles Court the authority or *pule* of the land or a higher title needs to be decided first.

9. Pending Appointment of a Titleholder

The case can be adjourned if the *matai* title is vacant relating to the matter (family titles and land) in dispute. For example, if the *pule* of the land is disputed and the *matai* title affected to such *pule* is vacant then the case is adjourned until a new titleholder is appointed.

10. Pending a Reply from the President

Some cases are adjourned due to applications pending before the President. Most of these applications are requests for permission from a President to clarify and put aside previous decisions of the Court.

11. Deputy President or Registrar's discretion

Technical problems including lost files, awaiting evidence from the Department of Land and Survey, Church documents, Public Trust Department, Land inspections and the Land Commission, gives the Deputy President the discretion on the advice from the Registrar for adjournment.

12. Unavailability of the Courthouse

The number of courthouses is not enough for the number of court cases being heard each day. Tuasivi comprises two Courthouses and the Court hearing proceed without delay. Many cases at Tuasivi are withdrawn due to peaceful settlement between parties. Mulinuu consists of two courthouses. However the schedule for cases to be heard is about three to four cases a day. So the Human Rights Protection Party (HRPP) hall is hired and sometimes it is not available. The only other option is to hire the Congregational Christian Church of Samoa (CCCS) Youth Hall when available. The cost of renting is \$400.00 per day and approximately \$ 2,000 for five days.

Appendix B 9: Court of Appeal

The Leave to Appeal (*Talosaga toe Iloilo*) allows the applicant to lodge his/her application within 21 days from the date of the original decision of the Land and Titles Court (*faaiuga a le faamasinoga o fanua ma suafa*), which is also called the decision of the lower court (LTC) (*faaiuga a le faamasinoga maualalo*). The Registrar is responsible to serve copies of the application for leave to appeal on all parties involved in the Court case. He/she prepares records of court proceeding, testimonies and evidence of the previous Court case for the president to consider Leave to Appeal. Each party wishing to oppose the application for leave to appeal should lodge its response within 21 days after the date of receiving the copy of the application for leave to appeal. The Court may dismiss the appeal on the application by any other party if the applicant does not provide his/her appeal with appropriate diligence or if the appellant does not appear at the time appointed for hearing of his/her appeal.

If the applicant wants to extend a time for Leave to appeal, the President may grant extra time to file an appeal. The appeal must be made no later than 2 months after the original decision is delivered. The application must reveal whether the appeal is favored or against the whole or only apart of the previous decision of the Land and Titles court.

The application for leave to Appeal shall be heard before the President on a date to be notified to each party by the Registrar. All parties may be heard and may make submission. The court hearing shall not be open to members of the public (Land and Titles Act 1981:31).

Leave to Appeal

Section 78 of the Act 1981 states:

No appeal shall be lodged without the leave of the President. In granting leave the President may order a stay of proceeding under the final decision or order (Land Titles Act 1981:29).

The grounds of the appeal are based on the following conditions stated by section 79;

1. New material evidence found since the hearing, which the applicant had no prior knowledge of, or could not reasonably have been adduced at the hearing;
2. The successful party is guilty of misconduct in relation to the hearing, which has affected the result of the case;
3. A witness is guilty of misconduct in relation to the hearing which has affected the result of the case;
4. A Court member or officer made a mistake or misconduct himself/herself in relation to the hearing and has affected the result of the case;
5. The Court did not have jurisdiction to make the final decision or order;
6. The decision or order is wrong in law or not in accordance with custom and usage;
7. The decision or order is manifestly against the weight of evidence adduced at the hearing. (*Ibid*).

Appendix B 10: The Rules of the Court

In the absence of specific rules, the rules of the Supreme Court determine the practice and procedure of the Land and Titles Court, unless inconsistent with or inapplicable to the matters within the jurisdiction of the Land and Titles Court as stated by the Act 1981. In any matter of practice and procedure not provided for, or where strict compliance with any rule of practice and procedure may be inequitable or inconvenient, the Court has discretion to act in each case in such a manner as it considers being most consistent with natural justice and convenience as mentions by section

(Land and Title Act, 1981: 47-48).

Appendix C

RELIGIOUS FREEDOM

Appendix C 1: Bible class at Saipipi, Savai'i

The Land and Titles Court Decision 14 September 1995

Due to the above mention reasons the Court (LTC) reached its decision and the judges of the Court unanimously agreed that the Court approve:

1. The public notification by *Ali'i* and *Faipule* of Saipipi in the *Savali* issue of 26th November 1993. The three (3) churches are sufficient for the worship of villagers of Saipipi. That is the Congregational Christian Church of Samoa (CCCS), the Mormon Church (LDS), and the Seventh Day Adventist (SDA).
2. As from the date of the decision, the Bible class or the new church led by Mau Sefo and others is banned from being held at Saipipi.
(Decision ALC 5130/5130P1 – 14 September 1995)

Appendix C 2: Court of Appeal decision (LTC), ALC 5103, ALC 5103P1, 3rd May 1996.

1. The appeal application was declined and the decision of the 14 September 1995 by the Lower Court (LTC) is upheld but with additional remarks:
2. If *Ali'i* and *Faipule* decide to recommence the Bible class in Saipipi, nothing shall preclude the authority of *Alii* and *Faipule* to permit this.
3. If the new church wishes to re-enter in Saipipi, it must seek the consent of *Ali'i* and *Faipule*.
4. The decision of the Court of Appeal does not affect the freedom of any person of Saipipi to worship in accordance to his/her beliefs.
5. However, he/she must commute elsewhere to attend his/her church if it is not one of the current religions permitted in Saipipi.
(Decision ALC 5130/5130P1 – 3 May 1996)

Appendix C 3: Bible Class at Falealupo

The court decision did not deny the truth that:

1. The decision of the 16 July 1987 – ALC 4140/4140 P1 is upheld.
2. The court confirms the prohibition of the Bible class in Falealupo.
3. The court ordered non-citizens of Falealupo who attend the Bible class to move out from the village.
4. The decision could be changed if both sides come into reconciliation with the sole consent of *Ali'i* and *Faipule* of Falealupo.
(Decision ALC 5130/5130P1 – 23 March 2000)

Appendix C 4: Land and Title Court Decision at Falealupo

1. The court upholds the dignity of the court decision of the ALC 4140 P2, ALC 4140P3 dated 23 March 2000.
2. The court confirms the petition by *Ali'i* and *Faipule* of Falealupo.
3. Thus, the court orders the Bible class to vacate the village within one month (1) from the date of this decision.
4. The house that the Bible class was held must be put down at the said time mentioned in section 2 of this decision.
(Decision – 7 September, 2000)

Appendix C 5: Court of Appeal

The Bible class led by Lemoa Silivelio appealed the Court decision, 7 September, 2000 in accordance with section 79 of the Land and Titles Act 1981, on the basis that the decision violates the Constitution of the Independent State of Samoa. The Court of Appeal refused to grant a permission to investigate the decision of the 7 September 2000. It would affect the decision of the Land and Titles Court of the 23 March 2000. The Bible class should appeal the decision of the 23 March 2000 before the decision of the 7 March 2000. However if the Bible class disagrees with the Court of Appeal's decision they should seek for legal advice. The Supreme Court is the other option to investigate the matter in accordance to freedom of religion as mentioned in the Constitution of Samoa.

Court of Appeal's Decision

- a. The decision of the Land and Titles Court of the 7th September 2000 is upheld.
- b. If the court grants a permission to investigate the decision of the 7th September 2000, it would affect the decision of the Land and Titles Court of the 23rd March 2000. The Bible class should appeal the decision of the 23rd March 2000 before the decision of the 7th March 2000.
- c. But if the appellants wish to continue to hold their Bible class in Falealupo they should seek a lawyer for legal advice. The Supreme Court is the other option to investigate the matter in accordance to freedom of religion as mention in the Constitution of Samoa.
(Court of Appeal's Decision, 28 February 2001)

Appendix C.6 Supreme Court Decision

1. The decision and actions of the Village Council (VC) of Falealupo in ordering the bible classes to cease, in dismantling the building where the bible classes were taking place and in banishing the members of the bible class amounted to a violation of Lafaialii's right to freedom of religion under Article 11 of Constitution of Samoa.
2. An order of *certiorari* was to issue to quash the decision of the Land and Titles Court on March 2000 and on 7 September 2000 as it contravened Lafaialii's right to freedom of religion provided in Article 11 of the Constitution.
3. All prosecutions currently before the District Court, the second defendant, against L contempt for alleged disobedience of the decision of the Land and Titles Court mentioned in (2) above were permanently stayed.
4. The actions of the VC, the third defendant, in dismantling the bible class building which belonged to Lafaialii were in violation of Lafaialii's right to freedom of religion provided in Article 11 of the Constitution and therefore declared unconstitutional.

5. The banishment by the VC of Falealupo, the third defendant, of Lafaialii and their families from the village of Falealupo because of their religious beliefs was a violation of Lafaialii constitutional right to freedom of religion and therefore declared void and of no effect.

6. Ownership of customary land carried with it the right to prevent or exclude a religion being practiced upon such land given the definition of customary land in Article 101 of the Constitution. In this case the owner of the land where the bible studies were being held had given his permission.
(Supreme Court's Decision – 23 April, 2003)

Appendix D

BANISHMENT OF A *MATAI* AND HIS FAMILY FROM SALEILUA VILLAGE

Appendix D 1: Fanene Anitelea and his sisters's petition

Between – Fanene Anitele'a and his sisters (Petitioning party or *Itu tagi*)

And – *Ali'i* and *Faipule* of Saleilua, Falealili (Responding party or *Itu Tete'e*)

Prayer

1. To disqualify the decision of *Ali'i* and *Faipule* of Saleilua against Fanene Anitelea's sisters because there are no serious offences done by the petitioners
2. Fanene Anitele'a's sisters must return to their land at Saleilua
3. The court should order *Alii* and *Faipule* of Saleilua to pay the petitioners the amount of \$250,000 due to the damage of the house, vehicle and other properties of the petitioning side.
4. To confirm, the dispute is the internal conflict of family but *Alii* and *Faipule* must not interfere. (They support some of our family and remove the Petitioning party).
(LC 10604 – 19/2/2004)

Appendix D 2: *Ali'i* and *Faipule* of Saleilua petition

Between - *Ali'i* and *Faipule* of Saleilua (Petitioning party or *Itu Tagi*)

And - Fanene Anitele'a and his sisters (Responding party or *Itu Tete'e*)

Prayer

1. That Fanene Anitele'a is not removed by the village decision.
2. To confirm the removal of Imeleta Fanene, Tauva Fanene, Carol Fanene, Aiafano Fanene and others.
3. To confirm that these ladies still violate peace in the *nuu* and in their *aiga*.
4. *Ali'i* and *Faipule* did not order to burn their house, vehicle and properties.
(LC 10604 P1 – 18/3/2004)

Appendix D 3: Court decision on the eviction of a matai and his sisters from Saleilua

- a. The court approved that Fanene Anitele'a and his sisters to return to Saleilua. But they should go back to the village after using the custom and usage.

- b. The court orders the *Ali'i* and *Faipule* of Saleilua to accept Fanene Anitele'a and his sisters without threat, if they do humble themselves.

- c. The court advises Fanene Anitele'a and Fanene Kavana to reconcile for peace in the family before further dispute in the future.
(LC 10604 / LC 10604 P1 – 2 / 4 / 2004).

Appendix E

DISPUTE OVER THE *PULE* OF THE TOELUPE TITLE OF MALIE VILLAGE

Appendix E 1: Toelupe Vaitoa's prayers or talosaga

Prayer

1. The responding side has no right to bestow the title because they have no relationship with Toelupe Vaitoa's family.
5. The Toelupe title is vested to my family and Toelupe Vaito'a is the only titleholder in the village.
6. The *pule* of the Toelupe title is vested with the *matai* and heirs of the title
7. I beg before the court to remove the title Toelupe forcefully conferred by the responding party.
(Signed : Toelupe Vaito'a - LC 1045 P1 – 14/10/1997)

Appendix E 2: Malietoa Tanumafili II's Prayer against Toelupe Vaito'a

Prayer

1. There is only one *pule* to the title Toelupe vested to the title Malietoa.
2. The title Malietoa first originated at Malie before the "*Fale Poufitu o Malietoa*" "Seven Posts of the House of Malietoa" including the title Toelupe.
3. The seven names of the "*Pou e Fitu o le Fale Malietoa*" (Seven Posts of the House of Malietoa) originated from Malietoa's journey to Manua. Thus, Malietoa has the sole authority to select anyone to hold such titles.
4. The court shall confirm that Vaito'a has no right to title Toelupe.
5. The court shall confirm the bestowal of the title Toelupe to Joe Leafa, Alaoa Maualaivao, Lalolagi Haini and Siaki Hunt as conferred to them by the sole authority of Malietoa Tanumafili II.
(Signed: Malietoa Tanumafili II-LC1045 P2 - 28/10/97).

Appendix E 3: Petition by *Ali'i and Faipule of Malie*

Between – *Ali'i and Faipule of Malie* (Petitioning party or *Itu Tagi*)

And – Toelupe Vaito'a, Fa'amausili Vaito'a, Maualaivao Pepe & Maualaivao Telefoni (Responding party or *Itu Tete'e*)

Prayer

1. The Malietoa title is the sole authority or *pule tutasi* of Malie. Everyone must obey and follow this *pule*.
2. The Responding party objected this *pule*, and saying disrespectful words to the declaration or *malelega* by Malietoa.
3. *Ali'i and Faipule of Malie* support Malietoa's *malelega* of 1/8/1997 and 23/7/1997.
4. *Ali'i and Faipule of Malie* pray to the court to remove the title Toelupe from Vaito'a, the Fa'amausili title from Vaito'a Jr, and the title Maualaivao from Pepe and Telefoni. These titles must return to Malietoa under his *pule fa'amalumalu* (umbrella authority).
5. The *malelega* by Malietoa Tanumafili II -1/8/1997 and 23/7/1997, we pray to the court to *faamaonia fa'a-le-tulafono* (officially approve).
(Signed: *Ali'i & Faipule of Malie*.LC1045 P3 - 19/11/97)

Appendix E 4: Toelupe Vaito'a's written submission

With due respect, I submit my written statement regarding the *pule* of the title Toelupe of Malie. We have not showed disrespectful manner to his Highness or Susuga Malietoa Tanumafili II. However, the dispute started when Leafa Vitale was bestowed with the Si'a and Toelupe titles at Vaovai, Falealili. Then on the 24th September 1997, Malietoa Tanumafili II declared to bestow the Toelupe and Si'a titles to his family at Malie. In this case, we objected to this new titles or *nofo fou* conferred by Malietoa to his family because we are true descendants of the title Toelupe.

The foundation/origin or *fa'avae* of Malie is Malietoa and the *to'afitu* and Auimatagi. There are different versions of how the *to'afitu* and Auimatagi originated in Malie. Some believe that the *to'afitu* came from Tokelau and some believe it came from Manu'a. However, we believe that the *to'afitu* originated or *mafua* from Tonga.

Appointment of *matai* or *auganofo* to title Toelupe

1. Toelupe Leoo
2. Toelupe Samuelu
3. Toelupe Ta'i
4. Toelupe Seaga Folomalo
5. Toelupe Folomalo II
6. Toelupe Alisa
7. Toelupe Vaito'a

Genealogy or Gafa

Togia'i married to the daughter of Taasiaihoa of Falefa issued Vaifoa and Sinavaiui (females). Maualaivao married Sinavaiui issued Samuelu (male). Toelupe Leoo married Vaifoa and was barren *pa/lefanau*. Then Toelupe Leoo and Vaifoa adopted Samuelu from the blood lines or known as *vaegatama*. Toelupe Leoo appointed Samuelu to the Toelupe title.

Toelupe Samuelu first married the daughter of Moefa'auo of Lufilufi, Upolu and begot Ta'i (male). Toelupe Ta'i married to Situe (daughter of Seuseu of Afega issued Faafuata (male). Faafuata married to Eleele of Sapapalii, Savaii issued Saifoloi, Sinia (males) and Tofili (female). Toelupe Samuelu's second marriage to Faavao (daughter of Fa'amausili Talitu) issued Seaga Folomalo (male) and Tui (female). Toelupe Seaga Folomalo married Tupu of Safotu; Savaii issued Semu, Folomalo II, Solomona, Faraimo, Tito (males) and Tali (female). This is the lineage from which Toelupe Folomalo II, Toelupe Alisa and Toelupe Vaito'a are descended.

Malietoa did not interfere with our genealogy or when descendants of our family were bestowed with the title Toelupe. These four new titles or *nofo fou* were forcefully bestowed by Malietoa Tanumafili II. The title Toelupe of Alisa was bestowed in 1935 by the authority or *pule/fa'apogai* of Maualaivao Tafao, Seaga Sa'u and the extended family, the ancestors of our family. Moreover, the title Toelupe of Vaito'a was bestowed in 1947 by the authority of our extended family. However, the matter was disputed in the court in 1949 – LC 1045 and the court again appointed Vaito'a to hold the Toelupe title. Other evidence which further confirm our pule to the disputing title is that some decisions by the Land and Titles Court about the pule on some customary land at Malie is vested to the title Toelupe of our family. Such decision by the Land and Titles Court includes;

1. Land Lalau – LK 95, 1906.
2. Land Salaatoa- LC 1888, 1968.
3. Land Falefasa – P.V. 55/72, 1972.

The bestowment of the Toelupe title by Malietoa Tanumafili II and his family is unsuitable according to 'custom and usage' because Toelupe Vaito'a did not agree to such bestowment.
(Signed: Toelupe Vaito'a)

Appendix E 5: Malietoa Tanumafili II's written submission

Respectfully, I submit my submission about the *pule* of the title Malietoa to Toelupe title. I know Vaito'a and his family had no respect or *leai se faaaloalo* and thought about me, the father of Malie. Therefore I decide to make clear the true positions at the moment of these two titles Toelupe and Si'a, and the founded authority or *pule fa'avae* of these titles. I will initially clarify how these titles originated and were named in Malie. "The Seven Posts of the Premises of Malietoa at Vaopipi Malie." (*Pou e Fitu o le Fale Malietoa*).

Oral Traditions

When Samoa won the war against Tonga, then Malietoa Savea became the first Malietoa. Tuimanu'a heard about Malietoa Savea's victory then he came to Upolu to meet Malietoa. The Tuimanu'a requested Malietoa Savea to travel with him to Manu'a. When Malietoa Savea had spent some days in Manu'a he asked Tuimanu'a that he wanted to return to Upolu. When Malietoa returned to Upolu, seven men accompanied him from Manu'a.

Malietoa Savea and his seven crewmen sailed to Upolu on a *alia* (double canoe). While they sailed from Manu'a to Upolu, a strong wind blew and damaged the house of the double canoe or *alia*. A sinnet or *afa* was needed to bind the timbers of the house; one crewmember used the sennit to bind the timbers of the house. Then Malietoa Savea announced that his name would be Leafa. At the same time, the thatches of the house of the *alia* (double canoe) were blown away and another crewmember collected the thatches, and Malietoa Savea named him Malili. The other man who thrustured in the thatches of the canopy was named Tumasunu'i and nowadays they are known as Maligi and Tulasunu'i.

The voyage continued and Malietoa Savea was hungry and one crewmember, said a pigeon or *lupe* is left or *toe ole lupe o loo totoe*'. The man cooked the pigeon (*lupe*) and Malietoa named him *Toeolelupe*, now known as *Toelupe*. Another crewmember rubbed the sticks to get fire or *si'a le afi* to cook the chief's food then Malietoa Savea told him that he would be named Si'a.

When the journey nearly saw the island or *vaaia le motu*, one-crew member said, that must be Upolu Island. Malietoa Savea said it is Upolu and you would be named Leupolu, which is now known as Leupolu. When the double canoe nearly arrived at the shores of Malie, Malietoa Savea said, someone should be ready to swim to the shore and

show us the way inland and the last man of the crew swam and Malietoa Savea named him Sauniaau.

These seven men got their titles from this voyage of Malietoa Savea when he returned from Manu'a, and they are called "The Seven Posts of the Premises of Malietoa or *Pou e Fitu o le Fale Malietoa*. And their *fa'alupega* (ceremonial greetings) is Auimatagi. It was originated from the wind current or *au o matagi* that hit the double canoe or *alia* and caused them to flow from Manua to Upolu. These Seven titles are Malietoa's council and Malietoa is the *pule fa'avae*.

When Ganasavea became the titleholder of the Malietoa title then Tuifeai known as the Tuifiti came from Fiji to meet Malietoa Ganasavea. The Tuifiti or Tuifeai stayed with Malietoa Ganasavea at Malie for several days. Thus, the Tuifeai begged Malietoa that he wanted to stay in Samoa. Malietoa told Tuifeai or Tuifiti, "you will go and live in the boundary of Atua and South of Tuamasaga and you would be named Tuisamoa. We will have the same ceremonial address of Tapaaufa'asisina but Samoa will listen to me (Malietoa). The title Si'a and Toelupe will be given to you to share your kava and food or *lufilufiina le ava ma mea taumafa*. This is to confirm that the *pule* of the Malietoa gave the Toelupe and Si'a titles to Tuisamoa (Tuifeai or Tuifiti).

The title Toelupe was bestowed again in Malie since it was taken to Tuisamoa at Falealili when Lalolagi, Matea and Ali'iva'a won the local warfare in Aana during the arrival of Christianity. Ali'iva'a died at the war, Lalolagi and Matea came to Malie with two ladies as their sisters. Their names were Mauga and Lie. Their stepbrother Lalolagi looked after their family when his father Maualaivao Lafituana'i passed away. Seaga Tui (male) married Mauga and was barren or *palle fanau*. Maganiuula (male) married Lie issued Tui (male). Tui Jr was adopted (vaetama) by Seaga Tui (Snr) and Mauga. Thus, Lalolagi conferred the title Toelupe to Tui. Toelupe Tui married Tui'a Fa'avao daughter of Faamausili Talitu issued Sumeo. Sumeo married Tupu (female) of Safotu begot Pulaka, Folo, Solomona, Faraimo, Tito (males) and Tali (female) the lineage of Toelupe Vaito'a.

Malietoa Tanumafili II also states that during his birthday on January 1996 he met with Tuisamoa. They talked about the Toelupe and Si'a titles. Tuisamoa told him that he (Malietoa) could do on his sole authority the bestowment of the Sia and Toelupe titles at Malie without interference of each other. This is to confirm that Malietoa could bestow the title Toelupe in Malie with his sole authority upon close and mutual relationship or *va-fa'a-tamali'i* with Tuisamoa. Hence, Malietoa Tanumafili II pray to the court, to remove the title Toelupe from Vaito'a and his family according to the title Malietoa's original authority or *pule fa'avae* to the Seven Posts of the House of Malietoa (Pou e Fitu o le Fale Malietoa).

(Signed: Malietoa Tanumafili II)

Appendix E 6: *Ali'i and Faipule's* written submission

Ali'i and *Faipule* of Malie submit their submission or *tala tusia* to support or *lagolago* the *malelega* (royal declaration) by Malietoa Tanumafili II regarding the overriding *pule* or *pule fa'a-malumalu* of title Malietoa over Malie. In the beginning, the relationship or *va-nonofo ai* between Malietoa and Malie is that the Toafitu and Auimatagi” fulfil anything that Malietoa wants. If there is anything that the Toafitu and Auimatagi wish to advise Malietoa they do so, but what Malietoa wants should be done. This is because Malietoa is the father or *tama* and has sole authority or *pule tutasi* over the land, trees, the sea, *matai* titles and every family in Malie. or *pule i fanua ma eleele, laau, sami, suafa matai ma so'o se aiga i totonu o Malie*. The fulfillment of any declaration or *malelega* by Malietoa is the duty of the ‘Toafitu and Auimatagi’.

If there is any dispute on matters pertaining to a certain family *aiga* between branches or *itupaepae*, then the disputants can take the matter to the court. When it comes to find the *pule* of a title or land in Malie, thus Malietoa has the sole authority or *pule tutasi* on everything in Malie.

A court case was held between Toelupe Vaito'a and Seaga Sefo on the title Toelupe. Seaga Sefo is the heir of Solomona and Toelupe Vaito'a is the heir of Folo. Folo and Solomona are brothers. An agreement was sought and the title Toelupe was conferred upon Vaito'a. In this case, Malietoa did not intervene so as *Aiga*, the Toafitu and Auimatagi because it was a dispute pertaining to their own family. If they were disputing about the *pule* then Malietoa, the *To'afitu* and *Auimatagi* would interfere. To some extent, the duty of the *To'afitu* and *Auimatagi* is to support and protect the sole authority or *pule tutasi* of title Malietoa in Malie.

The Council of chiefs (Auimatagi) stood their staff or *tu le to'oto'o* against Vaito'a and his family regarding their disloyalty and disrespect to Malietoa Tanumafili II's declarations or *malelega*. However, Toelupe Vaito'a and his family did not humble themselves or *loto fa'amaualalo*. Therefore, *Ali'i* and *Faipule* of Malie pray to the Court to:

1. Delete from the register of *matai* the title Toelupe from Vaito'a
2. Confirm or *fa'amaonia* that the title Malietoa has the sole authority over everything in Malie.

(Signed: *Ali'i* & *Faipule* of Malie).

Appendix E 7: Land and Titles Court's Decision (LTC).

The Court confirms that:

- (a) The original/consitutive authority or *pule fa'avae* of the title Toelupe at Malie is vested to the title Malietoa.
- (b) The court has ordered the Department of Land and Titles Court to remove the title Toelupe from Vaito'a in the register of *matai* of Malie.
- (c) The court has the power to remove the section two (2) of the Land and Titles Court decision of the –LC1045 -16th May 1949.
- (d) The court confirms the appointment of Joe, Alaoa, Siaki and Lalolagi to the title Toelupe in accordance to the declaration or *malelega* by Malietoa Tanumafili II.
(L C 1045 P1/P2/P3 – 6/2/1998)

Appendix E 8: The Court of Appeal's Decision

- (a) The application by Toelupe Vaito'a to appeal the decision of the lower court –6th February 1998 is granted.
- (b) The *pule* of the Malietoa title in Malie is the *pule fa'amalumalu* (overriding authority)
- (c) The original/consitutive authority or *pule fa'avae* of the Toelupe title at Malie is vested to the heirs or *suli* of the *matai* title or *suafa matai*
- (d) The Court of Appeal confirms Vaito'a to hold the Toelupe title and the Land and Titles Court should re-registered in the register of *matai* at Malie the title Toelupe of Vaito'a.
- (e) The title Toelupe of Joe, Alaoa, Siaki and Lalolagi is removed and deleted from the register of *matai* of Malie.
(LC 1045 P1/P2/P3 – 12/3/1999)

Appendix E 9: Malietoa title is the *pule fa'amalumalu* in Malie

The Court of Appeal confirmed that the authority “*pule*” of Malietoa title at Malie is the overriding authority or *pule fa'amalumalu* due to the following reasons:

1. The declaration or *malelega* by Malietoa Tanumafili II received by the Land and Title Court, as he mentioned that his *pule* over Malie is the *pule fa'amalumalu*.
2. Toelupe Vaito'a stated that the *pule* of Malietoa title at Malie is the *pule fa'amalumalu*.
3. *Ali'i* and *Faipule* of Malie also agreed that Malietoa's *pule* over Malie is the *pule fa'amalumalu*.

Appendix F

DISPUTED *PULE* OVER THE 10 *Gafa* OF LAND AT LEAUVa'A VILLAGE

Appendix F 1: Tuala Patolo Talipope III's petition against Fulu Vaea Ioane

Between – Tuala Talipope III: (Petitioning party or *Itu Tagi*)

And – Fulu Vaea Ioane: (Responding party or *Itu Tete'e*)

Prayer

1. The 10 *gafa* (10 fathoms) in dispute is owned by the title Tuala, as Tuala Talipope III is the titleholder. It is a parcel of customary land called *Maotasa*.
2. The *Itu Tete'e* (responding side) stays on the land by the authority of the title Tuala.
3. The house in dispute must be dismantled. The *sa'o* of the family wanted to build a new guesthouse or *faletalimalo* for the title Tuala and the *aiga potopoto*.
4. The court should avoid the responding side or *Itu Tete'e* from interference to the *sa'o* (principal *matai* of the family) for his preparation on the parcel of land called *Maotasa* (10 *gafa*) for the welfare of the extended family.
(L.C. 9522 - 18/4/1995)

Appendix F 2: Fulu Vaea Ioane's petition against Tuala Patolo Talipope III

Between – Fulu Vaea Ioane: (Petitioning party or *Itu Tagi*)

And- Tuala Patolo Talipope III: (Responding party or *Itu Tete'e*)

Prayer

1. The current titleholder of the title Fulu is Fulu Vaea Ioane. The *pule* (authority) of the 10 *gafa* (10 fathoms) (No 20) (west side of the main road) and the parcel of the land called *Maotasa* of Leauva'a is vested to the title Fulu.
2. The *Itu Tagi* (Petitioning party) and *Itu Tete'e* (responding party) are related from the same ancestor. But the division of the 10 *gafa* (10 fathoms) is written under the name of Fulu Poliko, heir of the *Itu Tagi* (Petitioning party).
3. We objected to the *pule* of the title Tuala on the disputed land.

4. We objected to building a new guesthouse or *faletalimalo fou*, because the family already has a guesthouse or *faletalimalo*.
5. The renovation of Fulu Vaea Ioane's house should be continued due to a lot of damages caused by Cyclone Val.
6. The title Fulu has the authority to evict anyone who lives on the parcel of land or *10 gafa* in dispute.
(L.C. 9522 –1/5/1995)

Appendix F 3: Court Decision over the 10 *gafa* or 10 fathoms at Leauva'a, Upolu

- a. The court confirms the *Itu Tagi* (Petitioning party) and *Itu Tete'e* (Responding party) have the same right or *aia tutusa* on the disputing land. They are heirs of Fulu Poliko whose name is written on the *10 gafa* (10 fathoms) N0 20. The *10 gafa* was divided by *Ali'i* and *Faipule* of Leauva'a.
- b. The court confirms the disputing land that is a part of the land called *Maotasa* is vested to the *fuaifale* (sub-branch) of the title Tuala Taetafe. The current titleholder of the title Tuala Taetafe is Tuala Patolo Talipope III of the *Itu Tagi* (Petitioning party)
- c. The court confirms the current titleholder of the title Tuala Taetafe is the *pule* (authority) of the land in dispute.
- d. The court agreed to dismantle the house of the *Itu Tete'e* (Responding party) and leave the location for a *faletalimalo* (guesthouse) as needed by Tuala Patolo Talipope III (titular/paramount chief).
- e. The court ordered Tuala Patolo Talipope III to select a portion of the land *10 gafa* for Fulu Ioane and his family to build their new house.
(L.C. 9522 & L.C. 9522 P1 – 28/7/1995).

Appendix F 4: Further clarification of the house in dispute

The house in dispute is owned by Maria (daughter of Fulu Poliko II). The extended family or *aiga potopoto* contributed and helped out during the establishment of the house. When Tuala Patolo became a *matai*, he wanted to build a guesthouse or *faletalimalo* on the position where the house in dispute was located. However, Maria (Fulu Kalolo's daughter) who was staying in American Samoa objected to Tuala Talipope III's plan.

Maria did not want to dismantle their house. The house belonged to their father (Fulu Kalolo) and the land *10 gafa* was registered under the name of Fulu Kalolo. Tuala Talipope III told the Officer, that he wanted to put down the house and build a guesthouse or *faletalimalo* for the extended family.

Tuala Talipope III noticed that Fulu Vaea Ioane and Tupa'i Sio continued to renovate the house. He went to Mulinu'u and asked the land Officer to send a letter to Fulu Ioane to stop the renovation until the matter was settled or *taofi le galuega se'i masuigamalie le mataupu*. But the officer replied, there was no vehicle at that moment to deliver the stop notice or *tusi taofi* to Fulu Vaea Ioane. Tuala Talipope thought that the Officer had been bribed by Fulu Vaea Ioane regarding the continuation of his house renovation. Tuala Talipope III had bestowed the title Fulu to Vaea Ioane. Ever since then, Fulu had disobeyed his orders and no longer rendered any *tautua* or service to him as the *sa'o* as well as the village and the church.

Appendix G

REGISTRATION OF *PULEFA'AMAU* AT FATALOA, SALELOLOGA

Appendix G 1: Public Notification of the pulefa'amau over parcel of land *Fataloa* at Salelologa, Savai'i in the *Savali*

In Samoan:

Ua faaalua le finagalo malilie o le fanau a Leuamuli Ologa II, ua fai ai Leuamuli Fa'avae o le matai o loo tausia le aiga ma sui e tuuina atu lo latou fanua o Fataloa ia Tui ma Masi Retzlaff ma le fanau e au iai latou mo le humanai o le a le toe aiaina e sulii o Leuamuli Ologa II.

O lenei foi fanua o loo fa'aaogaina i le taimi nei e Tui ma Masi Retzlaff e tusa ma le lisi sa faia e lo latou tama o Leuamuli Ologa II i le aso 1 Setema 1960, e aafia uma ai le itu auuala i tai ma uta o le alatele o le Malo, ma o tuaoi o lea fanua:

*Matu ma Seumanu Sila,
Saute ma Seumanu Saleilua,
Sasae ma le Sami
Sisifo ma le auuala o le Uafu*

Appendix G 2: Public notification of the *Pulefaamau* over parcel of land *Fataloa* at Salelologa, Savai'i in the *Savali*.

In English:

Leuamuli Faavae (current titleholder of title Leuamuli) act on behalf of heirs of Leuamuli Ologa II, have sole agreement to give parcel of land called Fataloa to Tui and Masi Retzlaff and their children without any interference or rights of Leuamuli Ologa's heirs in the future.

The parcel of land is currently used by Tui and Masi Retzlaff in accordance to the lease that made by Leuamuli Ologa II, on September 1st, 1960 which including both sides of the Government Road.

The boundaries of the parcel of land are:

North – Seumanu Sila

South – Seumanu Saleilua

East – Sea

West – Road to the Wharf.

Appendix G 3: Registrar's Interim Order

The Registrar may with the concurrence of the President or 2 Samoan Judges at any time before commencement of proceeding, make such order as he thinks fit to restrain any Samoan from remaining in possession of entering upon any land and exercising any right or doing any act matter or things concerning or affecting any land or any Samoan name or title (Land and Titles Act 1981:22).

Appendix G 4: Public notification of the *Pulefa'amau* of land Fataloa at Salelologa, Savai'i in the *Savali*

In Samoan

1. *O le aso 24 Mati, 2000 sa totogi ai le fa'asalalauga o le pulefa'amau a Taotua Fulisia mo Suli o Taotua Potoa'e, a'o le aso 31 Oketopa sa fa'asalalauina ai i le Savali ma e fa'apea:*

Ua fa'aalia le finagalo malie o Taotua Fulisia, ma suli o Taotua Potoae ina ia pulefa'amauina se vaega o le fanua o Fataloa o lo latou tama o Taotua Potoa'e. Ma o le tele o lenei fanua e tusa lea ma le 4 eka tele pe itiiti.

*Tuaoi:- Sisifo ma Matamua Paulo
Sasae ma Taotua Uati
Matu ma le Sami
Saute ma se vaega o Fataloa.*

*Sainia e: - Taotua Fulisia
Mo Suli o Taotua Potoa'e.*

Appendix G 5: Public notification of the *pulefa'amau* of land Fataloa at Salelologa, Savai'i in the *Savali*

In English:

1. On March 24th, 2000 Taotua Fulisia paid the notification of the *pulefa'amau* on behalf of heirs of Taotua Potoae (father) on a parcel of land called Fataloa. On 31st of October the *pulefa'amau* was published in the *Savali* and thus says:

Taotua Fulisia and heirs of Taotua Potoae have sole agreement to claim the *pulefaamau* on a parcel of their father's (Taotua Potoae) land called Fataloa. The land is approximately four (4) acres more or less.

The boundaries of the parcel of land are:
West – Matamua Paulo

East – Taotua Uati
North – Sea
South – part of land Fataloa

Signed: Taotua Fulisia
For: Heirs of Taotua Potoa'e

Appendix G 6: Fa'aiuga a le Faamasinoga i le Pulefa'amau i se vaega o Fataloa, Salelologa.

In Samoan:

- a. *Ua fa'amaonia ele Fa'amasinoga, le pulefa'amau a Taotua Fulisia ma suli o Taotua Potoa'e i se vaega o le fanua o Fataloa, e pei ona fa'asalalauina i le Savali o le aso 31/10/2000.*
- e. *E maea le 3 masina o le fa'asalalauga i le aso 31/1/2001 e leai se fa'alavelave i lenei fa'asalalauga.*
- i. *Ma ina ia tusa ai fo'i o le vaega 18 & 19 o lea lava tulafono ina ia fa'amaonia ai lea fa'asalalauga.*

Tuasivi 15 Me 2001

Sainia: Maugatai Esau
Sui Peresetene

Appendix G 7: The Court's Decision: Registration of individual's authority over parcel of land called Fataloa, Salelologa.

In English:

- a. The court confirmed the *pulefa'amau* by Taotua Fulisia and heirs of Taotua Potoa'e to a parcel of land at Fataloa as published in the *Savali* -31st October, 2000.
- b. After 3 months of publication there was no objection. The public notification was approved in accordance to section 18 and 19 of the Land and Titles Act 1981.

Tuasivi 15 May 2001

Signed: *Maugatai Esau*
Deputy President