

PART IV

JURISDICTION

1 Jurisdiction

1.1 General

Article 103 of the Constitution requires that the Land and Titles Court has jurisdiction in relation to matai titles and customary land, as provided by any Act.

The Court has all the powers inherent in a Court of record.

See s25(2)

The jurisdiction may be exercised on the petition of anyone claiming a bona fide interest or the Registrar.

See s38

In all proceedings, the Court can exercise its jurisdiction in terms of the petitions before it or in accordance with what it considers to be fair and just between the parties. This gives the Court power to do whatever it considers to be fair and just, so long as it applies:

- custom and usage;
- the law relating to custom and usage;
- the Land and Titles Act and any other enactment that applies to the Court.

See ss37(1) and 37(2)

1.2 Exclusive Jurisdiction

The Court has exclusive jurisdiction over:

4. Samoan names or matai titles

All matters of claims and disputes relating to Samoan names or matai titles, in accordance with custom and usage, which include among other things:

- authority over matai titles;
- rights or obligations attaching to any title;
- defining heirs to matai titles;
- appointments to matai title, including an intention to appoint.

See s34(2)(a) and (b)

5. Customary Lands

All matters of claims and disputes relating to customary lands, in accordance with custom and usage, which include:

- ownership and control;
- right of succession and occupation;
- eviction;

- banishment;
- defining boundaries;
- pulefaamau.
See s34(2)(c)

6. Appeal from decisions by Village Fono

All matters, including:

- punishments;
- other customary disputes/issues;
- decisions relating to hygiene and economic development, even where these are not the village's customs and usage.
See Village Fono Act – s11

7. Hearing appeals from the Land and Titles Court

Any final decision of the Land and Titles Court is subject to appeal by way of rehearing by the Court. Refer to Part VIII: Appeals.

See ss76-89

2 Exercise of Jurisdiction

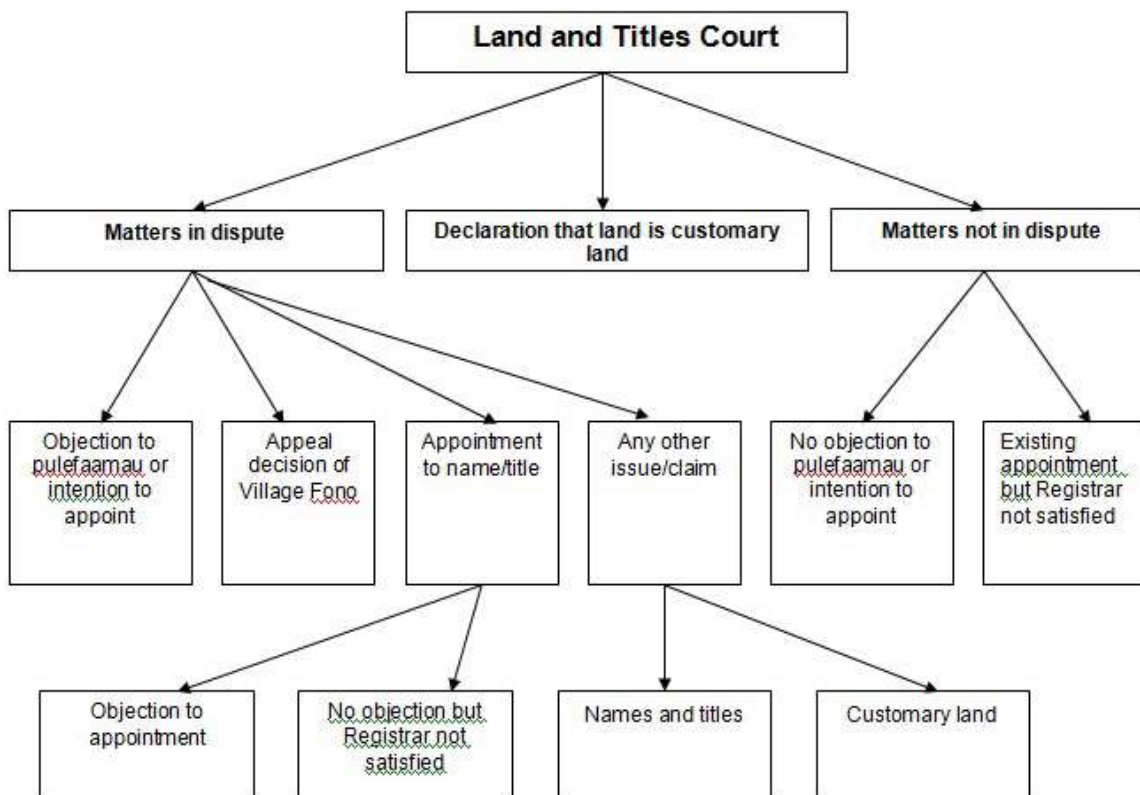
The jurisdiction of the Court is exercised in different ways, depending on which of the following three categories the proceedings fall within:

- matters in dispute;
- matters not in dispute;
- declaration that land is customary land by consent.

2.1 Exercise of Jurisdiction – A Summary

Figure 4 shows the matters that may be heard by the Land and Titles Court.

Figure 4 Matters that May be Heard by the Land and Titles Court



2.2 Proceedings Over Matters in Dispute

Composition of Court

The Court consists of the President or Deputy President and at least four Judges and Assessors, (of whom two or more must be Judges).

See s35

Subject Matter of Proceedings

The subject matter of proceedings can be any customary issue or matter in dispute between two or more parties relating to:

- claims of pulefaamau or a published intention to appoint any person to be a holder of a matai name or title;
- appointments to names or titles;
- any other issue relating to names, titles or customary lands;
- decisions by a Village Fono, including punishments for misconduct.

Jurisdiction

a) Any form of dispute relating to names, titles or customary land

In proceedings relating to names and titles, or rights and obligations attaching to names and titles, where there is a dispute, the Court has jurisdiction to make any order or declaration to preserve or define these, including an order for costs:

- in terms of petitions before it; or
 - in accordance with what it considers to be fair and just between the parties.
- See ss34(2)(a) and (b); s37(2)*

In proceedings relating to customary land, where there is a dispute, the Act is not explicit about what orders the Court may make. By implication, however, the Court has jurisdiction to make any order, including an order for costs:

- in terms of petitions before it; or
 - in accordance with what it considers to be fair and just between the parties.
- See ss34(2)(c); s37(2)*

b) Village Fono decisions or punishments: s11 Village Fono Act 1990

In proceedings relating to decisions, including punishments imposed, by a Village Fono, the Court has jurisdiction to:

- allow the appeal and the original decision becomes null and void;
- dismiss the appeal;
- refer the decision back to the Village Fono for reconsideration. Note that there is no further right of appeal against the Village Fono's decision if the Court refers it back for reconsideration.

The Court may act in terms of petitions before it, or in accordance with what it considers to be fair and just between the parties.

Note that the Court has no power or jurisdiction to impose any punishment or penalty or to substitute one punishment or penalty for another in cases of appeal against a Village Fono decision.

See ss37(1) and 37(2); s11 Village Fono Act 1990

2.3 Proceedings Over Matters Not in Dispute

Composition of the Court

The Court consists of the President or Deputy President alone and with just one party present (ex parte).

See ss19 and 22(9)

Subject matter of proceedings

The subject matter of proceedings can be:

- claims of pulefaamau or a published intention to appoint any person to be a holder of a matai name or title, where no valid objection has been lodged at the expiry date of the statutory three month publication period;
- existing names and titles where the Registrar later becomes satisfied that the original appointment was not made in accordance with customs and usages.

See ss19 and 22(9)

Jurisdiction

The Court (sitting without Samoan Judges or Assessors) has jurisdiction, *ex parte*, to:

- confirm, wholly or in part and with or without modification, any uncontested *pulefaamau* claim or the making of any appointment where the notification of the intention to appoint is uncontested;
- determine whether a name or title is to be deleted from the Register of Matais.

The Court may act in terms of petitions before it, or in accordance with what it considers to be fair and just between the parties.

See ss19, 22(9) and 37(2)

2.4 Declaration that Land is Customary Land by Consent

Composition of the Court

The Court consists of the President or Deputy President and at least four Judges and Assessors, (of whom two or more must be Judges).

See s35

Subject matter of proceedings

The subject matter of proceedings can be:

- any freehold land;
- any land in respect of which the customary or freehold status is claimed to be in doubt.

Jurisdiction

The Court may declare land to be customary land, only by consent of all persons listed *in ss9(3) and (4)*.

See s9

The Court has jurisdiction to make any order (including an order for costs):

- in terms of petitions before it; or
- in accordance with what it considers to be fair and just between the parties.

See section 37(2)

3 Adjourments

Generally, it is within the jurisdiction of the Court to adjourn proceedings on any matter, in the interest of justice and with such conditions as it thinks fit.

See s39(2)

Because of a steadily growing increase in the volume of cases, the question of adjournment should be considered with care, reasonableness and fairness.

Remember, justice delayed is no justice at all.

If parties request an adjournment, they must pay a prescribed fee.

Note that the Court can adjourn proceedings to enable verification of land status by the Land Titles Investigation Commission.

See s9(6)

4 Surveys

It is within the jurisdiction of the Court to order a survey of customary land which is the subject of proceedings:

- either before commencement of proceedings; or
- by Order as part of its final decision.

5 Land Inspections

Land inspections form the integral part of many proceedings relating to customary land. Inspections assist the Court in:

- weighing the evidence adduced by each party;
- making findings of facts for the purpose of its final decision.

6 Interim Orders

By the President

The President has discretionary power to make such interim orders as he thinks fit as to:

- the possession of land;
- the using of a matai title;
- the exercise of the right to which the petition relates.

The exercise of this discretionary power becomes operative upon the commencement of any proceedings and pending the final determination of the petition to the Court.

See s49

By the Registrar with the concurrence of the President or two Samoan Judges

The Registrar has discretionary power to make such interim orders, with the concurrence of the President or two Samoan Judges, restraining any Samoan from:

- remaining in possession of or entering upon any land;
- holding or using any Samoan name or title;
- exercising any right or doing any act, matter or thing concerning or affect only customary land or Samoan names or titles.

The Registrar should confer with either the President or two Judges, giving them the full information and surrounding circumstances giving rise to the need for an interim order.

Judges should ensure that they have full information before concurring.

The Registrar may exercise his/her discretion where:

- a dispute has arisen between Samoans;
- the dispute is likely to be the subject matter of Court proceedings;
- Court proceedings have not commenced as no petition has been filed.

Any interim orders by the Registrar remain in full force until the final judgment of the Court.

The President however has discretion to vary, modify or rescind any such interim order made under s50, after the commencement of proceeding, on application by any party affected by the Order.

Before the commencement of the proceedings, the Registrar at any time can make, modify, vary or rescind the order upon application by any person(s) affected by such an Order.

7 Unpublished Petitions

The Court has a discretionary power with regards to unpublished petitions.

Section 46 states that a petition, which has not been notified in the Savali, cannot be heard, except by leave of the Court given on terms and conditions the Court may impose.

The exercise by the Court of its discretion to dispose of any unpublished petition must be made with extreme caution and flexibility. This is because the decisions of the Court will be binding on those who have an interest in the matter, even if they have not had notice of the matter.

- For example, someone living in another country or the unborn may be affected by a decision of the Land and Titles Court. If the petition is not published, these individuals will not be able to respond. This will affect their right to be heard and right to a fair trial.

Some examples of unpublished petitions for the exercise of the Court's discretion:

- Petition by Registrar relating to pulefaamau or proposed appointment that has been published for 3 months and no objection lodged.
See ss14,15,16,18
- Petition by a new appointee to a matai title. The appointment has been published in the Savali for 3 months and no objection lodged, but the Registrar has given written notice declining recognition of the new appointee as rightful holder.
See ss23(6),(7),(8)
- Petition by any party additional to a petition already published.
- Petition by any party in reply to a petition by any other party already published.
- Petition by any villager against a decision imposed by a Village Fono.
See s11 Village Fono Act 1990
- Petition relating to the eviction of any person from occupation of customary land.
- Petition relating to banishment.

8 Appeals

Refer to Part VIII: Appeals, below.