

PART V

PROCEDURES

1 Introduction

The procedure of the Land and Titles Court is governed by the *Land and Titles Act 1981*.

In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in such manner as it considers to be most consistent with natural justice and convenience.

Proceedings are commenced by way of petition prepared by the Registrar, the petitioner, or his/her solicitor.

As all people having an interest in the land or matai title in question will be bound by the Court's decision, notice of the proceedings is very important, therefore:

- the petition is served on all known parties; and
- all petitions are published in the government newspaper, the Savali, including details and date of Court sitting.

2 Pre-Hearing Processes

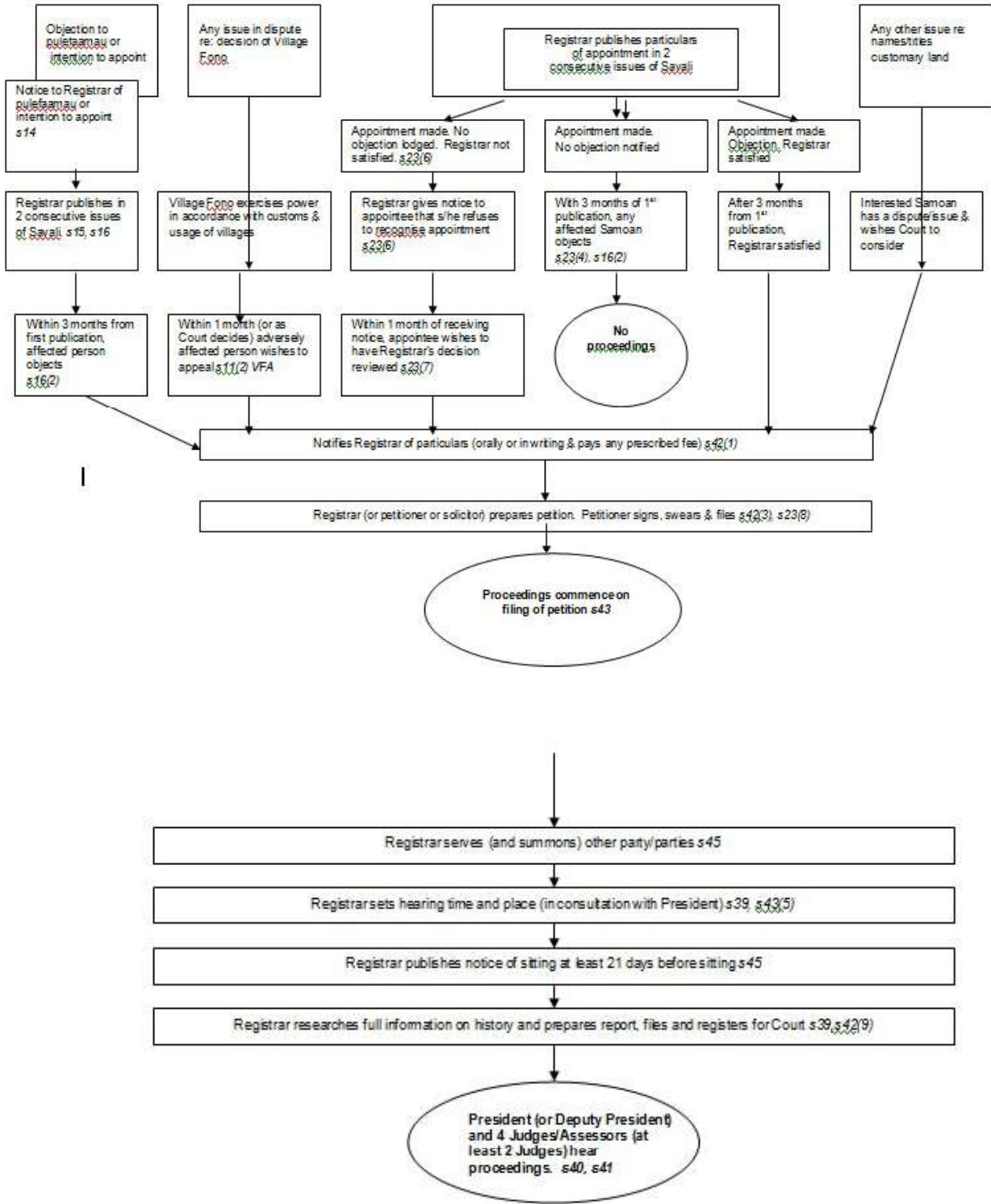
This section shows the processes leading up to the sitting of the Court.

2.1 Pre-Hearing Process for Matters in Dispute

The diagram on the following page shows the pre-hearing processes for matters in dispute.

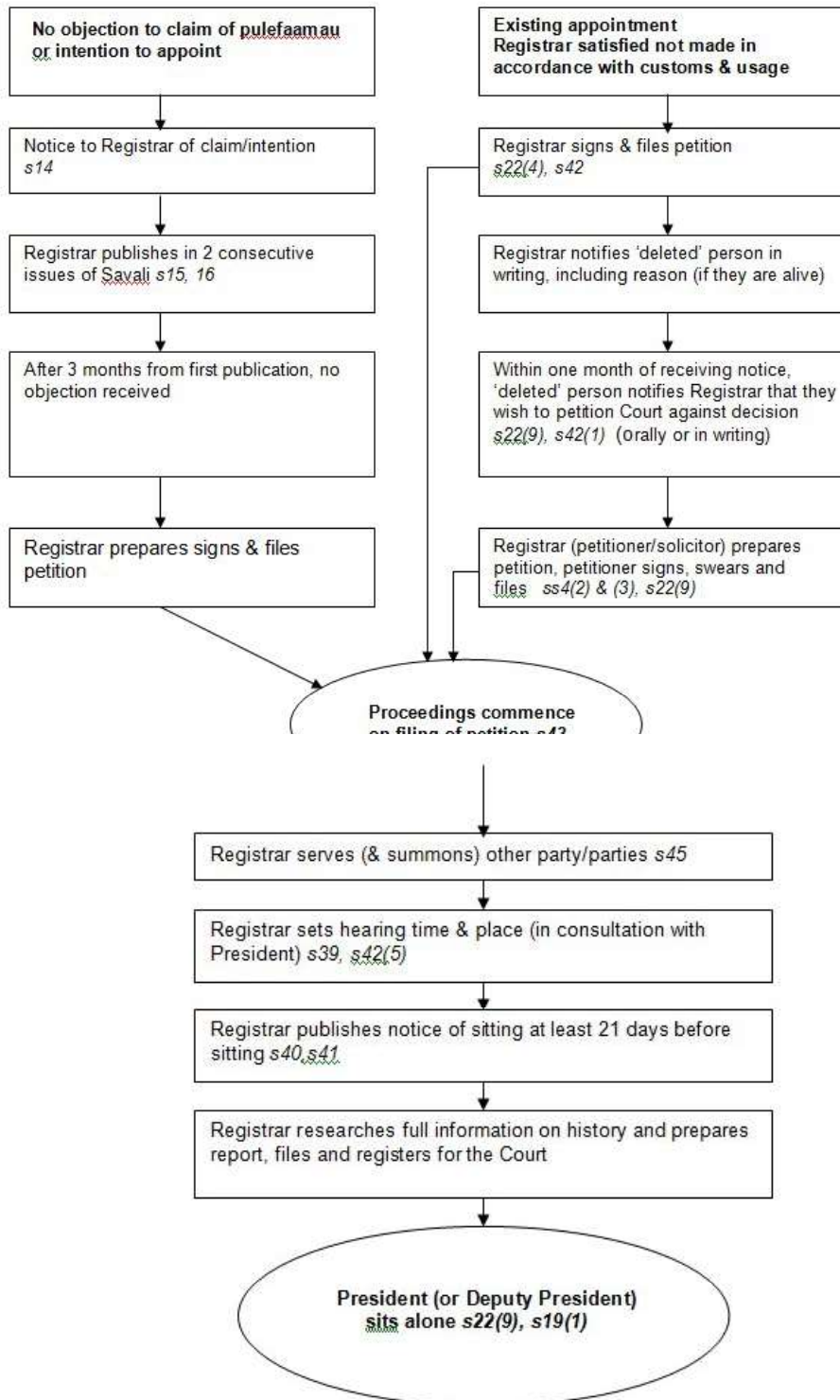
Figure 5

Pre-Hearing Process for Matters in Dispute



2.2 Pre-Hearing Process Where There is No Dispute

Figure 6 Pre-Hearing Process for Matters Where There is No Dispute



3 Reference Guide to Various Proceedings

The following pages are intended as quick reference guides for each type of proceeding. These pages detail:

- where the Court's jurisdiction comes from;
- how proceedings are initiated;
- who may apply;
- composition of the Court;
- what the Court can do;
- whether there is a right of appeal.

Further guidance is given where appropriate.

3.1 Claim of Pulefaamau or Intention to Appoint – Objection Filed

Where jurisdiction comes from *s34(2).*

Pre-hearing process Notice is given to Registrar of claim of pulefaamau or intention to appoint a person to be a holder of a matai name or title, and pays prescribed fee – *s14*.

If Registrar is satisfied the claim or intention is bona fide and the fee is paid, Registrar publishes claim or intention in 2 consecutive issues of the Savali in prescribed form, including time and place objections by affected persons may be lodged - *ss15, 16*.

Within 3 months from 1st publication, an affected person objects – *s16(2)*, and notifies Registrar of particulars (orally or in writing) and pays prescribed fee – *s42(1)*.

Registrar prepares petition (in the prescribed form) – *ss 17, 42(2)*.

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45*.

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5)*.

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41*.

Who may apply? Any Samoan who may be affected by the claim or appointment – *s17*.

Composition of Court President (or Deputy President) and at least 4 Judges and Assessors (at least 2 of whom are Judges) – *s35*.

What the Court can do

The Court can make any orders or declarations in relation to names, titles and customary land – *s34(2)*.

The Court can decide all matters in accordance with what it considers to be fair and just between the parties. They are not limited to terms of petition – *s37(2)*

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.2 Claim of Pulefaamau or Intention to Appoint – No Objection

Where jurisdiction comes from *s19.*

Pre-hearing process Notice is given to Registrar of claim of pulefaamau or intention to appoint a person to be a holder of a matai name or title, and pays prescribed fee – *s14.*

If Registrar is satisfied the claim or intention is bona fide and the fee is paid, Registrar publishes claim or intention in 2 consecutive issues of the Savali in prescribed form, including time and place objections by affected persons may be lodged - *ss15, 16.*

If no objection is received within 3 months from 1st publication, Registrar prepares, signs and files a petition to the Court for confirmation of the claim or appointment – *s18.*

Registrar prepares petition in the prescribed form – *ss17, 42(2).*

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5).*

Registrar publishes notice of sitting in Savali, at least 21 days before sitting commences, stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41.*

Who may apply? Any person who claims a pulefaamau or notifies an intention to appoint initiates this process, but it is the Registrar who files the petition – *s18.*

Composition of Court President (or Deputy President) alone – *s19(1).*

What the Court can do Confirm claim or appointment, wholly or in part, with or without modification – *s19(1)*, although any claim or proposed appointment confirmed by the Court may be set aside for reason of error, misconduct or bad faith – *s19(2).*

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note any claim or appointment confirmed under *s19* may be set aside for reasons of:

- error;
- misconduct;
- bad faith.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.3 Appeal from Decision of Village Fono

Where jurisdiction comes from *s11(1) Village Fono Act 1990.*

Pre-hearing process Village Fono exercises its power/authority in accordance with the customs and usage of the village, including:

- making rules for the maintenance of hygiene and regarding economic development – even if not part of their customs and usage;
- punishments.

Adversely affected person gives oral or written notice of the matter of appeal to Registrar – *ss11(7) Village Fono Act; s42(1).*

Registrar prepares petition (in the prescribed form) – *s42(2).*

Petitioner signs, swears and files the petition – *s42(3).*

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45.*

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5).*

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41.*

Who may apply? Any person adversely affected by a decision of a Village Fono (including punishment) – *s11(1) Village Fono Act.*

Composition of Court President (or Deputy President) and at least 4 Judges and Assessors (at least 2 of whom are Judges) – *s35.*

What the Court can do

The Court may:

- 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 - *s37(2)*.

NOTE: 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 - *s11(6) Village Fono Act*.

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

See *s11(6) Village Fono Act* for the exception to the ability to appeal.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.4 Appointments to Names or Titles

Where jurisdiction comes from *s34(2); s23.*

Pre-hearing process Within 7 days of traditional appointment ceremony, new appointee must give notice in writing to Pulenu'u of the village, and to the Registrar – *s23(1)*.

Within 14 days of learning of traditional appointment ceremony, Pulenu'u must ascertain 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 – *s23(2)*.

Registrar publishes particulars of the appointment in 2 consecutive issues of the Savali, including a notice fixing the time and place at which objections to the appointment may be lodged (not less than 3 months from date of first publication) – *s23(4), s16*.

No objection:

If Registrar is satisfied that:

- title belongs to the village;
- traditional ceremony held; and
- appointment complies with customs and usages,

then the Registrar issues certificate to new appointee and enters name into Register of Matais – *s23(6)*. There are no proceedings before the Court.

Objection lodged:

Any interested Samoan gives oral or written notice of the matter in dispute to Registrar – *s42(1)*.

Registrar prepares petition (in the prescribed form) – *s42(2)*.

Petitioner signs, swears and files the petition – *s42(3)*.

Registrar arranges service of the petition on every party to the

proceedings, including a summons to respondents requiring them to appear at the hearing – *s45*.

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5)*.

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41*.

No objection, but Registrar not satisfied:

If no objection is received within the time limit but the Registrar is not satisfied that:

- title belongs to the village; or
- traditional ceremony held; or
- appointment complies with customs and usages,

then the Registrar gives notice to the ‘appointee’ that he/she refuses to recognise the appointment (and makes sure that the names are not entered into the Register of Matais) – *s23(6); s23(9)*.

Within 1 month of receiving the notice, if the ‘appointee’ wishes to have the decision of the Registrar reviewed by the Court, he/she notifies the Registrar of the particulars of the matter (orally or in writing) and pays any prescribed fee – *s42(1)*.

Registrar prepares petition (in the prescribed form) – *s42(2)*.

Petitioner signs, swears and files the petition – *s42(3); s23(8)*.

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45*.

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5)*.

Registrar publishes notice of sitting in Savali (at least 21 days

before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41*.

Who may apply?

Objection lodged:

Any interested Samoan – *s34(2)*; any Samoan who may be affected – *s16(2)*.

No objection, but Registrar not satisfied:

The ‘appointee’ – *s23(7)*.

Composition of Court

President (or Deputy President) and at least 4 Judges and Assessors (at least 2 of whom are Judges) – *s35*.

What the Court can do

Court can make any orders or declarations in relation to names, titles and customary land – *s34(2)*.

The Court can decide all matters in accordance with what it considers to be fair and just between the parties. They are not limited to terms of petition – *s37(2)*.

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.5 Any Other Issue re: Names or Titles and Customary Land

Where jurisdiction comes from *s34(2).*

Pre-hearing process Any dispute arises relating to names and titles, or customary lands, that cannot be resolved between the parties.

Any interested person who wishes the Court to consider the matter gives oral or written notice of the matter in dispute to Registrar – *s42(1)*.

Registrar prepares petition (in the prescribed form) – *s42(2)*.

Petitioner signs, swears and files the petition – *s42(3)*.

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45*.

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5)*.

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41*.

Who may apply? Any interested Samoan – *s42(1)*.

Composition of Court President (or Deputy President) and at least 4 Judges and Assessors (at least 2 of whom are Judges) – *s35*.

What the Court can do Court can make any orders or declarations in relation to names, titles and customary land – *s34(2)*.

The Court can decide all matters in accordance with what it considers to be fair and just between the parties. They are not limited to terms of petition – *s37(2)*.

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance/comments

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.6 Deleting Name or Title from Register of Matais

Where jurisdiction comes from *s42(2); s22.*

Pre-hearing process Where the Registrar is satisfied that an existing appointment was not made in accordance with custom and usage, he or she prepares, signs and files petition for the Court to determine whether or not the name or title should be deleted from the Register – *s22(4); s42.*

The Registrar notifies the ‘deleted’ person in writing of the deletion and reasons (if he/she is still alive) – *s22(8).*

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45.*

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5).*

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41.*

Within 1 month of receiving notice, the ‘deleted’ person notifies the Registrar that they wish to petition the Court against the deletion of their name or title (orally or in writing) - *s22(9); s42(1).*

Registrar prepares petition (in the prescribed form) – *s42(2).*

Petitioner signs, swears and files the petition – *s42(3).*

Who may apply? The Registrar and the ‘deleted’ person – *ss22(8) and (9).*

Composition of Court President sitting alone – *s22(9).*

What the Court can do Court can make any orders or declarations in relation to names, titles and customary land – *s34(2)*.

The Court can decide all matters in accordance with what it considers to be fair and just between the parties. They are not limited to terms of petition – *s37(2)*.

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance/comments

Refer to Part VI: Managing Proceedings and Part VII: Decision Making, below.

3.7 Declaration that Land is Customary Land

Where jurisdiction comes from *s9.*

Pre-hearing process Any person or the Ali'i and Faipule of village claims interest in:

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

Notifies Registrar of particulars of claim (orally or in writing) and pays prescribed fee – *s9(1); s42(1).*

Registrar publishes the petition in 2 consecutive issues of Savali, giving notice of time and place for filing objections at least 3 months from 1st publication – *s9(2).*

Any Samoan affected by the petition may lodge an objection within the timeframe – *s9(2).*

Registrar arranges service of the petition on every party to the proceedings, including a summons to respondents requiring them to appear at the hearing – *s45.*

Registrar consults the President and sets the time and place of the sitting – *ss39, 42(5).*

Registrar publishes notice of sitting in Savali (at least 21 days before sitting commences), stating:

- time and place;
- names of parties to each petition; and
- nature of relief sought – *ss40, 41.*

Who may apply? Any person or the Ali'i and Faipule of village who claims interest in freehold land or land in which the customary or freehold status is claimed to be in doubt – *s9(1).*

Composition of Court President (or Deputy President) and at least 4 Judges and Assessors (at least 2 of whom are Judges) – *s35.*

What the Court can do

Make (or decline to make) a declaration that land is customary land, by consent – *s9; s34(2)*.

Note the Court may also:

- separately consider questions of matai title or pule after making such a declaration – *s9(7)*.
- adjourn proceedings so that an objector may make a claim of freehold interest to the Land Titles Investigation Commission, and wait for its decision – *s9(6)*.

Note the limitations to the Court’s power in *ss9(3) and (4)* – in effect, all people with any interest in the land must consent to the declaration that the land is customary land (except where their claim to a freehold interest has been rejected by the Commission) – *s9(5)*.

Is there a right of appeal?

Yes – *s76(1)*. Must have leave of President – *s78*.

Note the limitations regarding costs and interim orders – *ss72, 49, 50*.

Note *s71* states that decisions are not reviewable 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.

See Part VIII: Appeals, below.

Additional guidance/comments

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