

PART VI

MANAGING PROCEEDINGS

1 Introduction

Hearings follow procedures that are a combination of Samoan custom and Court convention:

- Parties are required to submit written summaries of their arguments in advance.
- Court officials seek to mediate.
- Parties do not cross-examine one another.
- Lawyers are not permitted to appear.
- The Court applies custom and usage and law relating to the application of custom and usage.
- Where such custom and usage does not apply, the Court acts as it considers fair and just.

2 Preparing for a Case

2.1 Role of the Registrar and Staff

All things being ready (petitions prepared, signed, sworn, filed, published and served on all other parties, and the date, time and place of hearing duly notified, in accordance with the requirements of the law), the Registrar and staff:

- conduct a thorough and methodical research of the full information on the history of the matters in dispute and forming the basis of proceedings;
- prepare and distribute to sitting members of the Court, at least 3 clear days prior to the hearing, a comprehensive and factual report on the background of the case, including:
 - certified true copies of every petition;
 - certified true copies of previous related decisions;
 - written related agreements;
 - notices of publications, e.g. pulefaamau, leases and the like;
 - maps, plans of survey carried out or sketch plans prepared during office inspections, where land is the matter in dispute;
- make available all related files and registers for perusal and examination by the Court;
- immediately inform the Court on any development likely to affect the hearing of the case, e.g. the non-service of documents or notices on parties;

- generally provide administrative support service including, among other things:
 - traditional welcoming of parties and the public;
 - swearing of parties;
 - collecting written statements from parties;
 - reading party statements in open Court;
 - taking full notes of proceedings;
 - interpreting aspects of proceedings where necessary.

2.2 Judge's Preparations Before Proceedings Begin

- Ensure you have studied and understood:
 - the contents of the Registrar's report on the history of the case;
 - all the petitions forming the basis of the hearing.
- Identify the issues in dispute and the relief sought.
- Peruse all related files.
- Make note of precedents, existing relevant decision and other important information and their significance to the present case.
- Study and marshal the information contained in statements by each party.

3 Forms of Hearings

All hearings in the Land and Titles Court are formal, whether they involve just a single party, or two or more parties.

All such hearings are to be conducted in a Courtroom. However, in proceedings relating to land disputes, part of the hearing will have to be conducted on the land in question, where inspection by the Court of that land is necessary.

The Court may comprise:

- the President or a Deputy President sitting alone. This will be in proceedings involving a single party; or
- the President or Deputy President and at least four Judges and Assessors (at least two of whom are Judges). This will be in proceedings involving two or more parties.

All references elsewhere in this Benchbook on the collective role of Judges in the conduct of a hearing relate equally to the President or Deputy President sitting alone for all practical purposes.

The President or Deputy President presiding has discretion to require additional Judges and Assessors in respect of any hearing, if considered necessary in the interest of justice, or if the importance of the case requires it.

The Court composition for the hearing of any case cannot be changed until the Court has given its final decision.

Every Judge and Assessor, hearing the case has an equal voice in all aspects of the hearing.
See ss35 and 63

4 Rules

4.1 Rules of the Court

In the absence of specific rules made, 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.

See s47 and 48

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.

See s47(2)

4.2 Supreme Court Rules

The rules of the Supreme Court, as in any other Court of law, are many, diverse and complicated.

Most rules relating to procedures, burden of proof, standard of proof, Judges' rules, types of evidence and their admissibility may not be applicable to proceedings in the Land and Titles Court.

It is essential, however, that the principles of judicial conduct and ethical principles are taken into account by the Court. Refer to Part III, section 4: Judicial Oath and Ethical Principles, above.

5 Court Protocol

The Court Clerk precedes the full panel into the Courtroom, calling out “All stand for their Honours” or words to that effect. If there is no orderly, normally a Police Officer is available.

You walk up to the Bench in a dignified manner, face the public, then bow first to the presiding President/Deputy President and then to the public.

You then sit down, and the public sit down.

The presiding President/Deputy President or a designated member of the Bench says a prayer.

The Court clerk announces “This Court is now open,” and carries on with the traditional welcoming of parties and the public who will reciprocate the salutations.

6 The Hearing Process

The Court Clerk reads out all the petitions.

The Chair calls upon each petitioner for confirmation of his/her petition, and then:

- addresses and rules on any preliminary matter raised by any party, for example, amending a petition, unavailability of party leader, adjournment, etc, unless he considers that circumstances warrant discussion of any such matter by the full Bench;
- admits the inclusion of additional parties upon application;
- announces the order in which parties will be called;
- ascertains from each party the names of their leaders and witnesses.

The Court Clerk administers the Oath of Truth on each party.

7 Conducting the Hearing

7.1 Principle that Affected Parties have the Right to be Heard

It is a well established principle, evolved from common law, that parties and the people affected by a decision should have a full and fair opportunity to be heard before the decision is made.

This principle focuses on the procedural steps implemented by the Courts. The purpose of the principle is to ensure that the Court considers all relevant information before making a decision.

There are two aspects of the principle:

- Prior notice: the Court should be satisfied that adequate notice has been given, as prescribed by law, except in the exceptional case of unpublished petitions. This is particularly important in the Land and Titles Court as decisions can affect many other people besides those who come before the Court.
- Fair hearing: the way the hearing is managed and the way witnesses are examined is extremely important for ensuring that the parties have the opportunity to be heard.

9.3 Communication

Speaking

- Use simple language without jargon.
- Make sure you know what to say before you say it.
- Avoid a patronising and or unduly harsh tone.
- Maintain eye contact.
- Always express yourself simply, clearly and audibly. It is important that:
 - the party examined and every other party understands what is happening in the Court and why it is happening;
 - the Court stenographer and other Court officials are able to hear what is being said for accurate note-taking; and
 - the public in the Courtroom are able to hear what is being said.

Listening Actively

- Be attentive and be seen to be attentive in Court.
- Make accurate notes.
- Maintain eye contact with the speaker.

Questioning

- Ask questions that are simple, brief and to the point for extracting the truth and/or exposing any falsehood.
- The essence of a good and effective examination is not to question crossly.
- Deal fully with the various matters and issues chronologically, including petitions, written and oral evidence by parties and other useful information available.
- Avoid tedious repetition, except for clarification of any ambiguity.

- Never allow your questioning to descend into an argument with a party or witness.
- Avoid interrupting a party or witness half way through an answer, unless it is necessary to bring them back on track.
- Avoid making long unnecessary statements.
- Never persuade or influence a party to agree on a settlement or reconciliation in the course of your examination.
- Never express or attempt to impress your own opinion on a party.

Leading Questions

- A leading question is one which either:
 - ⊖ suggests to the party or witness the answer which should be given; or
 - ⊖ assumes the existence of facts which are in dispute.
- Leading questions are not allowed during examination of parties, except in certain situations as follows:
 - ⊖ during cross-questioning;
 - ⊖ in regard to introductory or undisputed matters;
 - ⊖ for the purpose of identifying persons or things in question;
 - ⊖ to refresh the memory of the party or witness, provided the answer is not suggested.

9.4 Statement in Reply and Rebuttal

Upon completion of the examination of all parties, each party is given limited time to make statements (oral or written) in reply to important points raised by other parties during the Court's examination.