

NO. 24474

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DEBRAH AKUI, Plaintiff-Appellee, v.
MOSES K. MOKE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH & SOUTH HILO DIVISION
(CIV. NO. 01-0102SH)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Moses K. Moke (Moke) appeals, *pro se*, the July 30, 2001 judgment, entered by the district court of the third circuit, the Honorable Jeffrey Choi, judge presiding, in favor of Plaintiff-Appellee Debrah M. Akui (Akui). We conclude, contrary to Moke's contentions on appeal, that the district court had jurisdiction over this matter pursuant to Hawaii Revised Statutes (HRS) §§ 604-5 (1993 and Supp. 2001) and 604-6 (1993), and that Akui could maintain her action against Moke there. We therefore affirm the judgment of the district court.

I. Background.

On January 7, 1954, the Hawaiian Homes Commission (HHC) leased Lot 19 in Keaukaha to John Kepoo. After he died, HHC leased Lot 19 to his widow, Harriet K. Kepoo, on August 3, 1955.

Moke's wife, Harriet K. Moke, formerly Harriet K. Kepoo, transferred the lease to her daughter, Jacqueline Kepoo-Sabate (Kepoo-Sabate), on March 10, 1994. In the summer of 1999, Kepoo-Sabate subdivided Lot 19 into Lot 19-A-1 ("the Property") and Lot 19-A-2. On February 3, 2000, Kepoo-Sabate transferred the lease of the Property to her sister, Akui.

According to Akui, Moke occupied the Property without right or her permission. In a January 31, 2001 letter, Akui's attorney demanded that Moke vacate the Property by February 9, 2001, or face legal action. Moke responded to Akui's attorney in a February 5, 2001 letter, stating that "[Akui's] claim in Lot 19-A-1 process is not authorized by law or constitution." After Moke refused to vacate the Property, Akui filed a complaint against him on February 22, 2001. Akui alleged that she is the lessee of the Property and that Moke "is occupying the property without plaintiff's consent" and without "right to possession or occupancy of the property."

Moke, proceeding *pro se*, filed a March 12, 2001 motion to dismiss the complaint for lack of jurisdiction. On March 13, 2001, attorney Emmett Lee Loy made his one and only special appearance on behalf of Moke to argue Moke's motion to dismiss. The district court granted the motion to dismiss, but allowed Akui "a reasonable time" for further filings on the issue. On March 23, 2001, Akui moved to set aside the dismissal, and on May

15, 2001, the district court heard and granted Akui's motion. On July 17, 2001, trial was held on the complaint. At the trial, Moke renewed his motion to dismiss the complaint for lack of jurisdiction, but the motion was denied. The district court found in favor of Akui, and on July 30, 2001, a judgment for possession was entered. A writ of possession was filed the same day. Moke filed his notice of appeal on August 10, 2001.

II. Discussion.

"The main issue in this appeal[,]"" according to Moke, is

whether the low-court in conflict with the provisions of federal law preempt or take precedence over state laws upon Hawaiian home lands in conformity with the governing compact between the State of Hawaii and the United States.

Opening Brief at 1. We believe that this is a challenge to the subject matter jurisdiction of the district court over Akui's action for summary possession or ejectment. We apprehend that Moke's argument in support of his main contention is the idea that the Hawaiian Homes Commission Act, 1920 (1993 & Supp. 2001) (the HHCA), see also Haw. Const. art. XII, §§ 1-4, is a federal law -- or, as Moke terms it, a "State-Federal compact" -- that preempts State law and thus denies State courts jurisdiction over Hawaiian home lands.

It is well settled, however, that the HHCA is a matter of State constitutional law and therefore, the doctrine of federal preemption simply does not apply in this case. In Kepo'o

v. Watson, 87 Hawai'i 91, 952 P.2d 379 (1998),¹ the Hawai'i

Supreme Court held:

The HHCA is, therefore, a matter of state constitutional law and does not constitute federal law. Consequently, federal preemption principles do not apply to this case because there is no relevant "federal law" at issue.

Id. at 98, 952 P.2d at 386. Accordingly, the district court had subject matter jurisdiction over this action pursuant to HRS §§ 604-5² and 604-6.³

We believe that Moke's other contention on appeal is

¹ In Keipo'o v. Watson, 87 Hawai'i 91, 952 P.2d 379 (1998), the plaintiffs argued that the defendants were required by Hawaii Revised Statutes (HRS) ch. 343 to prepare an environmental impact statement for a proposed cogeneration power plant. The defendants, on the other hand, claimed that the statute did not apply because the land upon which the power plant was to be located was Hawaiian home land and thus not subject to HRS ch. 343. The defendants argued that the Hawaiian Homes Commission Act (the HHCA) is a federal law that preempts HRS ch. 343, a State statute. However, the supreme court held that "[w]hile the HHCA was originally enacted by Congress as a federal statute, it was subsequently adopted as part of the Hawai'i Constitution. Haw. Const. art. XII, § 1. This was done pursuant to a compact with the United States entered into when Hawai'i was admitted into the Union. See Admission Act § 4, 1 Haw.Rev.Stat. at 90-91; Haw. Const. art. XII, §§ 2 & 3. Consequently, the HHCA is now part of the Hawai'i Constitution and any conflict between the HHCA and a state statute is a matter of state constitutional law." Id. at 98, 952 P.2d at 386.

² HRS § 604-5 (1993 and Supp. 2001) provides, in pertinent part:
(a) Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed \$20,000, except in civil actions involving summary possession or ejection, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim.

³ HRS § 604-6 (1993) provides:
Nothing in section 604-5 shall preclude a district court from taking jurisdiction in ejection proceedings where the title to real estate does not come in question at the trial of the action. If the defendant is defaulted or if on the trial it is proved that the plaintiff is entitled to the possession of the premises, the court shall give judgment for the plaintiff and shall issue a writ of possession. The rules of court shall govern the stay of a writ of possession.

that the HHCA, by its own terms and not by way of preemption, precludes Akui's private cause of action in the district court. Moke asserts that only the Department of Hawaiian Home Lands (the DHHL), and not a private party, may bring this suit because Hawaiian home lands are under the exclusive control of the DHHL.

In this connection, Moke cites the following passage from Ahuna v. Dept. of Hawaiian Home Lands, 64 Haw. 327, 640 P.2d 1161 (1982):

Thus from our review of the evolution of the HHCA and its impact on native Hawaiians, we conclude (1) that the federal government set aside certain public lands to be considered Hawaiian home lands to be utilized in the rehabilitation of native Hawaiians, thereby undertaking a trust obligation benefiting the aboriginal people; and (2) that the State of Hawaii assumed this fiduciary obligation upon being admitted into the Union as a state.

The [DHHL], headed by the [HHC], received exclusive control of the Hawaiian home lands by section 204 of the HHCA. The HHCA further stated: "The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title." HHCA, § 206. We conclude from this history that the [HHC], which oversees the [DHHL], is the specific state entity obliged to implement the fiduciary duty under the HHCA on behalf of eligible native Hawaiians.

Id. at 338, 340, 640 P.2d at 1168, 1169. However, Ahuna involved the question whether the DHHL had fulfilled its fiduciary obligation in awarding only a portion of a certain lot to a lessee. Id. at 328-29, 640 P.2d at 1163. An ancillary issue was raised, whether a private action may be maintained under the HHCA against the DHHL, but it was not decided by the supreme court as it was not properly before the supreme court on appeal. Id. at 332-33, 640 P.2d at 1165. Thus, Ahuna does not even remotely stand for the proposition Moke discerns in it. And the Kepo'o

court disabused us of the notion, apparently gleaned by Moke from the Ahuna quotation, that the DHHL is the only entity authorized by the HHCA to enforce laws on Hawaiian home lands. Kepo'o, 87 Hawai'i at 99-102, 952 P.2d at 387-90.

Again in support of his latter contention, Moke cites HHCA § 217 (Supp. 2001), which provides, in relevant part:

In case the lessee or borrower or the successor to an interest in the tract, as the case may be, fails to comply with any order issued by the [DHHL] under provisions of section 210 or 216 of this title, the [DHHL] may:

- (1) Bring action of ejectment or other appropriate proceeding; or
- (2) Invoke the aid of the circuit court of the State for the judicial circuit in which the tract designated in the [DHHL's] order is situated. Such court may thereupon order the lessee or the lessee's successor to comply with the order of the [DHHL]. Any failure to obey the order of the court may be punished by it as contempt thereof.

However, Moke is not a "lessee or borrower or the successor to an interest" in the Property, id., and does not claim to be such, and hence, HHCA § 217 does not support his contention. Moke also cites Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n (Keaukaha I), 588 F.2d 1216 (9th Cir. 1979), and Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n (Keaukaha II), 739 F.2d 1467 (9th Cir. 1984). However, these cases addressed whether Hawaiian home lands lessees could maintain a private cause of action against the HHC for breach of its fiduciary duty and violation of State and federal constitutional and statutory provisions. Keaukaha I, 588 F.2d at 1219-20; Keaukaha II, 739 F.2d at 1469-70. These cases are inapposite.

III. Conclusion.

The July 30, 2001 judgment of the district court is affirmed.

DATED: Honolulu, Hawaii, December 20, 2002.

On the briefs:

Moses K. Moke,
defendant-appellant, *pro se*.

Acting Chief Judge

Lynn H. Higashi,
Cades Schutte Fleming & Wright,
for plaintiff-appellee.

Associate Judge

Associate Judge