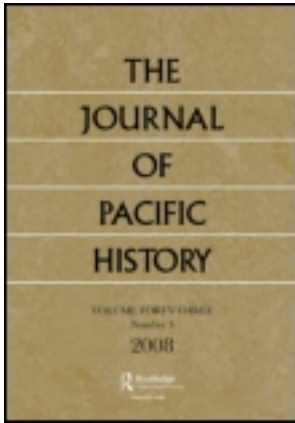


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Who Will be the Next Mālietoa? Will there be Another Mālietoa?

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PACIFIC CURRENTS

Who Will be the Next Mālietoa? Will there be Another Mālietoa?

History and Politics of Succession to a Paramount Tama-a-‘Āiga Title of Sāmoa

ABSTRACT

The appointment of successors to paramount chiefly titles in Sāmoa is typically a slow and troubled process. This is instanced by the failure, at the time of writing, for a successor to be appointed to the Mālietoa title, last held by Mālietoa Tanumafili II, who passed away in 2007. The task of choosing a successor to any title ideally rests with the family, though increasingly the Land and Titles Court is being pressed to make the final settlement. In contemporary circumstances, the difficulties of appointing a successor to a paramount title are illustrated in the travails of the ‘Āiga Sā Mālietoa, or extended Mālietoa family, which has struggled to agree on either a candidate or a process. Unless the rules governing succession are reviewed and the Land and Titles Court is modernised and equipped to play a more proactive role, ancient family titles in Sāmoa may be destined for abeyance. Much hinges on the issue of chiefly succession, which has wide ramifications for Sāmoan society and development, and resonates more widely in the Pacific.

‘The farther backward you can look, the farther forward you are likely to see.’
Winston Churchill

In 1977, anthropologist Unasa Le‘ulu Felise Va‘a noted that ‘it has been the curse of Sāmoan society that successors to deceased title-holders often take many years before they are finally appointed either by the family or the court. Recent trends show that, more often than not, final settlement of successors is made by the Land and Titles Court’.¹ Though generalising about *matai* titles, Va‘a’s discussion specifically referred to two paramount *tama‘āiga* titles vacant between 1974 and 1977. Thirty years later, succession to another *tama‘āiga* title seems similarly cursed: the Mālietoa. The last titleholder, Mālietoa Tanumafili II, passed away on 11 May 2007.² Since 1962, when Sāmoa gained independence, he had served as Sāmoa’s head of state, at first conjointly and then from 1963 alone.³ As bearer of the Mālietoa *matai* title, he held one of Sāmoa’s four paramount titles, and a successor became a matter of national and regional interest. At the time of writing, the appointment of a successor remains unresolved.

The relegation of ancient family *matai*⁴ titles to the dust-heap of history is a wretched thought, but seems a likely outcome unless government institutions, namely the Land and Titles Court, keep pace with rapid change. Succession to Sāmoa’s paramount *matai* titles or

¹Felise Va‘a, ‘Royal titles, a sore point’, *Pacific Islands Monthly* (October 1977), 11–12.

²Some confusion exists on his actual year of birth. According to the [Official] *State Funeral Programme of His Highness The Head of State Susuga Mālietoa Tanumafili II 17–18 May 2007*, 14, 16, his date of birth is 4 January 1912. *New Zealand Herald Pacnews* 1 of 14 May 2007 states 4 January 1913. The latter date is stated by his grandson Papāli‘i Mālietau Mālietoa in an email to the author, 20 Aug. 2008.

³Tupua Tamasese Mea‘ole served as joint head of state from 1962 until his death in 1963.

⁴Titled head of a family, i.e. an *ali‘i*, *tulāfale* or *tulāfale ali‘i*.

tama'āiga has a long and contentious history. In the precolonial past, when paramount titles became vacant and family efforts failed to appoint a successor, the customary arbiter was war. To contain and minimise conflicts, the German administration, which came to power in 1900, created a mechanism tasked with this responsibility. Since the 1930s, this mechanism has become the Land and Titles Court.⁵ Virtually all families, including the four paramount families, have had succession issues resolved by the court.

Under current judicial procedures, the court recognises six criteria that are applied to assess eligibility and fitness of candidates: character and ability, age, mother's rank and family's influence, past service to a former holder, evidence of residence in the village to which the title belongs, and nature of the candidate's genealogical connection with previous titleholders.⁶ In concert with village councils, churches and government agencies, the court today is charged with adjudicating succession matters by reference to oral tradition and custom.⁷ Disputes have become so numerous and complex, and the court's backlog so huge, that conflicts can take years to resolve if at all. Because titleholders control 80% of Sāmoa's land (and significant sea) resources, succession disputes have wide implications for national development efforts, including development on customary land.⁸ These disputes also open old wounds. Furthermore, as disputants wallow in the agenda and intrigue of the past, the nation's brightest and able bodied move on and out of Sāmoa to find coping strategies for a changing society.⁹

Mālietoa's passing as the country's long-serving head of state also opened a new chapter in Sāmoa's modern constitutional history. In addition to a vacancy in the headship of the Sā Mālietoa family, it also created a vacancy for the nation's head of state. Resolving the latter issue was the easier of the two. In accordance with the constitution, the late Mālietoa had held the position for life. Upon his death, the constitutional provision that future heads of state will be elected for a five-year term was invoked. Though unwritten, it was understood that the new head of state would be elected from the *tama'āiga* category of *matai*, and Tui Atua Tupua Tamasese Taisi Tufuga Tupuola Efi Nelson – another *tama'āiga* titleholder – was duly elected as the country's third head of state.¹⁰ The unwritten expectation that the position would be confined to *tama'āiga* titleholders had earlier also been assumed for the Council of Deputies, an entity that was created to pacify other *tama'āiga* titleholders, by providing them with an honoured and formal role in government. However, this assumption for the council membership may no longer be valid, as more recent events suggest.¹¹ With over thirty years in power, the governing Human Rights Protection Party, instead of removing the anachronism and effecting savings, has appointed non-*tama'āiga* titleholders to the council.¹²

⁵M. Meleiseā, 'The Land and Titles Commission 1903–1914', in idem, *The Making of Modern Sāmoa: traditional authority and colonial administration in the history of Western Samoa* (Suva 1987), 64–6.

⁶R.P. Gilson, *Samoa 1830 to 1900: the politics of a multi-cultural community* (Melbourne 1970), 31–9; A.M. Tuimaleali'ifano, *O Tama a 'Āiga: the politics of succession to Sāmoa's paramount titles* (Suva 2006), 91. Other considerations include a *mavaega* – dying testament of the deceased titleholder and *toe ole uso* – the right of the surviving brother.

⁷A related but separate issue is definition of custom – its precise nature and as a codified set of principles to guide the court in settling title disputes based on 'custom' is lacking. See A. Morgan Tuimaleali'ifano, 'The Role of the Court and Resistance to Court Rulings', in idem, *O Tama a 'Āiga: the politics of succession to Sāmoa's paramount titles* (Suva 2006), 91.

⁸J.T. O'Meara, 'Customary individualism', in R.G. Crocombe (ed.) *Land Tenure in the Pacific* (Suva 1987). Of the remaining 20% of land not under customary tenure, 16% is government land and 4% freehold.

⁹On succession to chiefly titles, see also Morgan Tuimaleali'ifano, 'Titular disputes and national leadership in Samoa', *Journal of Pacific History*, 33 (1998), 92–3, or for a more detailed study, Tuimaleali'ifano, *O Tama a 'Āiga*.

¹⁰See Morgan Tuimaleali'ifano, 'Identifying a new head of state for Sāmoa', *Fiji Times*, 14 June 2007.

¹¹Mulipola advocates limiting head of state appointments to *tama'āiga* titleholders. In support, Falaniko Tominiko adds that like the appointment of a *matai*, a head of state should be appointed for life. See <http://www.3news.co.nz/Samoa-Head-of-State-should-be-a-life-appointment/tabid/1686/articleID/262749/Default.aspx#ixzz2Ir7wSze9>, accessed 24 Jan. 2013.

¹²Non-*tama'āiga* titleholders who have been appointed to the Council of Deputies include Vā'ai Kolone, Matai'a Visesio and Faumuina Anapapa. The sole member since 2007 has been Tuimaleali'ifano Va'aleto'a Eti. For discussion

While the appointment of a successor to the head of state position was decided by a democratically elected parliament, the appointment of the next Mālietoa titleholder ideally rests with the Sā Malietoa family. At the time of writing, its decision was still pending, not entirely surprising, given that the extended family, segmented into three branches, is most probably the largest in the country. Given the protracted process and expense associated with appointing successors at this level, some important issues have been raised. Do such *matai* titles have a future? Will *tama'āiga* titles continue to have meaning? What are the rules of succession for the Mālietoa title? Have these worked for appointing a successor to Mālietoa Tanumafili II? When the family has failed to agree, has the court's decision been fair? What of family unity? Are current procedures adequate? Are there options for reform?

1. *Tama-a-āiga: Meaning and Significance*

Compounded from *tama* meaning 'child' or 'person' (usually a male or *tama tane*), *a* meaning 'of', and 'Āiga' meaning 'family', the term *tama-a-āiga* means a person of large family connections or a 'royal son'.¹³ A person, who has played a prominent role in the family's past, either through war or strategic marriage alliances, over time has his personal name elevated to a title. Depending on the scope of influence exercised by inheritors of the title, it becomes an umbrella for families who accept the title as referring to a founding ancestor. Subsequent holders of the title assume jurisdiction over the descendants and ancestral land.

Formerly, among the foremost Sāmoan titles were *ao* and *pāpā* titles (*ao* meaning clouds¹⁴ and *pāpā* meaning thunder). Both were imbued with sacred powers. By the 18th century, four *pāpā* became regarded as titles of the highest rank,¹⁵ and any one *ali'i* or high chief who secured all four was accorded pre-eminence as *tafa'ifā* (literally four in one), a position which foreigners often mistook for kingship.¹⁶ Ceremonial and symbolic, the most important category of players in securing the four *pāpā* titles for their favourite candidate was a band of elite orator chiefs or *tulafale*. The constant rivalry over these titles and the quest for status as *tafa'ifā* was a cause of deep-seated unrest among Sāmoans and a key factor in Sāmoa's loss of sovereignty in 1899.¹⁷ The main contenders for *tafa'ifā* in the late 19th century have been the holders of *tama'āiga* titles and, in a way, these have eclipsed *ao* titles.¹⁸ The Mālietoa, Matā'afa and Tupua Tamasese families have provided the main contenders for *tafa'ifā* from the late 19th century.¹⁹

The Mālietoa name was founded about AD 1200 when Sāmoans succeeded in subduing Tongan rulers. Over time, the name was elevated to a title and gained prominence when one of its holders, Mālietoa Vainu'upo²⁰ successfully avenged the assassination of Lei'ataua Lelologa Tamafaigā, a despotic ruler in the early 19th century. Mālietoa

of the Human Rights Protection Party, see Iati Iati, 'Samoa's price for 25 years of political stability', *Journal of Pacific History*, 48:4 (2013), 443–63.

¹³ J.W. Davidson, *Samoa mo Samoa: the emergence of the independent state of Western Samoa* (Melbourne 1967), 433, 17–19.

¹⁴ The three recognised *ao* titles are Tonumaip'e'a, Tagaloa and Lilomaiva. Except for Tonumaip'e'a, the Tagaloa title has been split four ways (*falefā o le fale* Tagaloa) as also the Lilomaiva title. The Tonumaip'e'a remains intact, but it has not been activated for some time and presupposes tensions within the family.

¹⁵ The main *pāpā* titles are Tui A'ana and Tui Atua (*tama tane* titles), and Gatoa'itele and Tamasoali'i (*tama fafine* titles).

¹⁶ Sāmoans also had difficulty in conceiving of the Western notion of kingship. Sāmoans 'had no sanctions or rules restricting title succession to a specific heir – to the eldest son, for example'. Gilson, *Samoa 1830 to 1900*, 59.

¹⁷ Tuimaleali'ifano, *O Tama a 'Āiga*, 9–14.

¹⁸ *Tama'Āiga matai* titles refer to Mālietoa, Matā'afa, Tupua Tamasese and Tuimaleali'ifano. The *tama'āiga* having supplanted the *ao* titles in rank, the term *ao* is instead used in modern political usage for the head of state and is rendered as Ao ole Malo.

¹⁹ To'oā Sualauvi, who some claim also held the Tuimaleali'ifano title, had successfully contested the *tafa'ifā* office before his death on 25 August 1870. His successors have not followed through on his claims or contested the office since then.

²⁰ c.1770 to 1841. Gilson, *Samoa 1830 to 1900*, 59; Davidson, *Samoa mo Samoa*, 44.

Vainu'upo became the first of the Sā Mālietoā (or Mālietoā family) to hold *tafa'ifā* office. With the London Missionary Society promoting his candidature, the Sā Mālietoā family remained prominent from 1830 and, in this way, eclipsed the former eminence of the Sā Tupuā (family of Tupuā).

Significantly, the Mālietoa title has served as an umbrella for Sāmoa's largest grouping of political families, eight at end of the 19th century and ten by the end of the 20th century.²¹ This total equals the combined number of political families owing allegiance to the other three *tama'āiga* titles.²² While modernists may embrace more democratic principles, for traditionalists these titles provide the candidates for the highest national offices. Mālietoa Tanumafili II held the title for almost seventy years,²³ which for many Sāmoans was synonymous with head of state.

2. *What are the Rules of Succession to the Mālietoa Title?*

The Mālietoa title first appeared before the Land and Titles Court in 1939 when the family could not decide on a successor to Mālietoa Tanumafili I. After an extensive hearing from 17 October to 13 December 1939, the court's decision fell into three parts.

1. It confirmed that the Sā Mālietoā family consists of three branches
 - a. that of Mālietoa Talavou,
 - b. Mālietoa Gatuitasina (Natuitasina), and
 - c. Mālietoa Mōli.

More specifically, the family of Mālietoa comprised descendants of the two sons of Mālietoa Vainu'upo (Mālietoa Mōli who died in 1860, and Mālietoa Talavou who died in 1880) and Mālietoa Natuitasina²⁴ who died in 1858 (see [Figure 1](#)).

2. It ruled that the two parties representing Talavou and Natuitasina – 'shall stand aside, and the appointment shall be given to a son of Mālietoa Tanumafili I'.
3. Finally, at the next vacancy, 'a holder shall be chosen from among these three branches'.²⁵

While this resolved the immediate problem in 1939, questions about who initiates and calls the meeting, the conduct of the selection process, and what measures were to be adopted in the event of a stalemate were not spelt out.

3. *Have the Rules Worked in Appointing a Successor to Mālietoa Tanumafili II?*

While the 1939 decision spelt out an understanding of principles to be observed following a vacancy, the steps to operationalise the understanding could not be followed in 2007.

²¹See Fa'amasili Papāli'i Taogaga Tonumaivao Mōli's eulogy on May 2007. DVD copy of live telecast service with author.

²²Tupuā Tamasese's political families are 'Āiga Sā Fenunuivao, 'Āiga o Mavaega and parts of 'Āiga Sā Tuala. Matā'afa's political families are 'Āiga Sā Levalasi and 'Āiga Sā Tago. Tuimaleali'ifano's political families are 'Āiga Taua'ana, 'Āiga Taulagi, 'Āiga Sā Tunumafono and Vae ole Nofoaia, the latter referring to branches of Sā Lilo-maiava in Sāvai'i and Upolu.

²³Mālietoa Tanumafili II was installed in 1939.

²⁴The Christian name is spelt Gatuitasina in the 1939 ruling and has since changed to Natuitasina in the 2008 ruling.

²⁵Land and Titles Court, LC 853, 14 December 1939; Mālietoa title case, S.N.A.'s Notes of Evidence, F.J.H. Grattan, papers relating to his government service in Western Samoa, ref. no. MS-papers 4879-057, 55, Archives of New Zealand, Wellington (hereinafter ANZ).

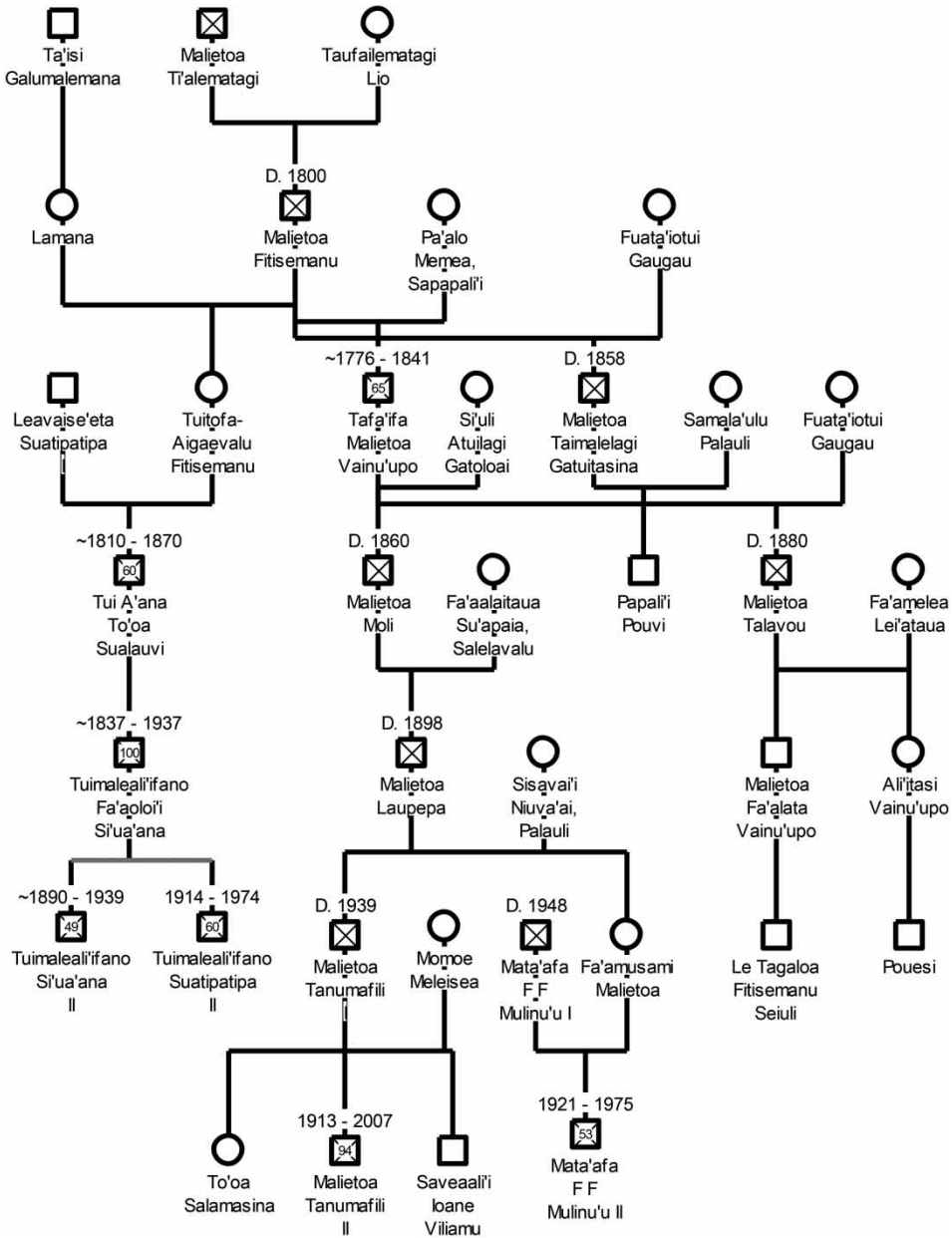


FIGURE 1 Genealogy of Sā Mālietoā.

The understanding that the three branches should meet seemed difficult to enact, because the three branches were stymied by competing interests among eligible candidates and supporters. In addition, the rush for an installation came too soon after the passing of Mālietoa Tanumafili II and did little to calm a potentially volatile atmosphere.

A pertinent question might be, 'Did the late Mālietoa titleholder make adequate preparation for a successor in terms of the 1939 ruling?' It is unclear whether the issue of a successor was discussed by the late titleholder during his almost seventy years of tenure of the title. If the

topic was broached, perhaps in muted ways with senior family members, an outcome of any such exchanges has yet to surface. The only indication that the late titleholder had taken an interest in a successor was the attention he gave to the training of his sons.²⁶ Because of its sensitivity and the need to be inclusive of other branches, the matter of a successor may have been deliberately left to protracted family discussion after his death, but whether his relatives appreciated the need to involve all the three branches in terms of the 1939 ruling is a moot point. In this particular instance, a discussion in terms of 1939 decision did not nor could take place.

If ever there was a family that needed uniting, it was the Sā Malietoā. The tensions had been palpable, with divisions within the three branches and traditional intrigues among the ten affiliated political families. Yet mourning rituals might have resolved many differences. On the passing of a paramount titleholder, the mourning period normally lasts six to twelve months,²⁷ during which ceremonial exchanges are observed and family custodians of certain artefacts are recognised. As well as allowing the expression of anguish and grief, funeral rituals provide opportunities for reconciliation; in the course of gatherings, property is exchanged, accompanied by prepared and measured oration, during which tensions are released and healing enabled. Though often time-consuming, these in-built mechanisms, if used properly and openly, can deliver effective long-term benefits. For candidates aspiring to leadership positions, such occasions provide an opportunity to demonstrate personal competence for uniting a divided family and to flag each candidate's interest in the family title. For a paramount title owned by three large branches and numerous political entities, the succession issue has wide political ramifications, and few expected a quick resolution.

The Installation of Mōlī Mālietōa on 14 June 2007

Unfortunately, the opportunity to process and articulate the succession issue through an extended mourning period was overshadowed by the national agenda to appoint a new head of state. The Human Rights Protection Party government had set Friday 15 June 2007 for the appointment, barely a month after the burial of the late Mālietōa. Because of the unwritten expectation that the head of state would be one of the four *tama'āiga*, some individual family interests were hopeful of securing an early installation to the Mālietōa title and by doing so, submit a formal nomination for the position. The major players in this scenario were the late titleholder's surviving son, Mōlī,²⁸ some members of the Mālietōa Mōlī branch, and the village of Malie on the northwest coast of 'Upolu.

Exactly one month and three days after Mālietōa Tanumafili II's passing, Mōlī was installed in Malie in the early hours of 14 June 2007.²⁹ However, his name failed to make the list of nominees for head of state.³⁰ Moreover, it is difficult to see how his name could

²⁶With New Zealand government assistance, the sons of Mālietōa Tanumafili II and Tupua Tamasese Mea'ole were groomed as successors to their fathers. Mālietōa Tanumafili II himself as Ati Mālietōa had attended schooling in New Zealand under New Zealand's oversight. See Western Samoa Political Affairs, Head of State, 02/60-06/69, ABHS W4627 950 box 4316, record no. 311/4/15, ANZ.

²⁷A period that roughly coincides with the cycle of planting and harvesting crops specifically prepared for an occasion such as a title installation.

²⁸For convenience, I shall use the candidate's Christian name throughout the article. His titles Fa'amausili, Papāli'i, Taogaga, Tonumaivao are used to distinguish him from other persons of the same name. For example, to distinguish him from his great great grandfather Mālietōa Mōlī.

²⁹Pers. comm. Pastors Tipeni Solomona of Malie and 'Auatama Esera of Sāpapāli'i, September 2007. A side issue was the growing resentment of Malie orators by other villages such as neighbouring Afega, who claimed Malie had pressed for Mōlī's installation to covet the best fine mats acquired from the funeral.

³⁰Apart from Tui Atua Tupua Tamasese Efī, son of one of two joint heads of state, the other two were Tuimaleali'ifano Va'aletō'a Eti, grand nephew of the first member of Council of Deputies and Fiamē Naomi Matā'afa, daughter of the first prime minister.

have been submitted given the requirements of the Land and Titles Court and the Titles Act that newly installed *matai* must be publicised in the government newspaper, *Sāvali*, followed by 30 days for any objections. The Sā Talavou and Sā Natuitasina branches as well as the village of Afega were vociferous in their public condemnation of the installation. They followed through with court injunctions that jeopardised an already delicate consultation process.

Nevertheless, some who objected to the installation took another view. For example, leading orators of neighbouring Afega village favoured the idea of retaining Sā Mālietoā in the running for head of state by arguing that Mōlī could be nominated using any one of his four *ali'i* titles.³¹ However, Mōlī's installation led to further political manoeuvring within Sā Mālietoā and its political families. In the absence of a clear procedure for initiating a consultation among the three branches, the events leading to the installation provide an example of what can happen when important succession matters are left to families under siege from inside and lacking a ready means to initiate negotiation on a successor. Any assumption that members of Sā Mālietoā were on uniformly good terms or were able to manage the collective process of decision-making was wishful, as demonstrated by the fact that no one felt confident enough to initiate a consultation. The only outside agency with the legitimate authority to conduct this on behalf of the family was the Land and Titles Court. When the court eventually did step in, it was besieged by members of Sā Mālietoā opposed to Mōlī's installation planned for 14 June. When the court finally called a meeting of all branches of Sā Mālietoā, preparations for the installation were in an advanced stage. The meeting was already too late.

Chronology of Events Leading to the Title Dispute

The meeting of the three branches was called by the Chief Executive Officer of the Ministry of Justice and Courts Administration and Registrar Masinalupe Tusipa just two days before Mōlī's installation. At this meeting, speakers for the branches of Talavou and Natuitasina opposed the installation, arguing that consultation required by the 1939 decision had not taken place.³² They therefore urged Mōlī's supporters to refrain from proceeding with the installation. The court also urged all sides to meet and reach an out-of-court settlement. The meeting ended with the speaker for the Mōlī side saying that their party would meet to consider the matter and duly inform the other two branches.³³

However, in a flurry of exchanges between the villages of Malie and Fa'ato'ia (where Mōlī and his immediate family resides), without informing the other two branches, Mōlī's supporters pressed ahead with the installation.³⁴ An additional factor was Mōlī's supporters from the village of Sāpapāli'i in Savai'i. Their unexpected arrival on 13 June for the yet-to-be-confirmed installation tipped the scales in favour of proceeding with the installation³⁵ and consequently for a show-down before the court.

So Mōlī was duly installed, and court proceedings followed. Hearings ran from late 2007 to mid-2008. The number of petitions totalled 51, consisting of 23 plaintiffs, 24 appellants and an additional four petitioners who were unsure whether they were against or for the installation.³⁶ Though the defendants outnumbered the plaintiffs (by two), this factor was insignificant

³¹ Afega shares honours in the installation of the Mālietoā title and accompanying *pāpā* title of Gatoa'itele. This option was in fact taken when a minority faction of the Human Rights Protection Party government moved the candidature of Fiamē Naomi. Naomi held the Fiamē title which is a non-*tama'āiga* title. Though she did not hold a *tama'āiga* title, in the eyes of her supporters she was eligible by the fact that she was a daughter of former *tama'āiga* titleholder, Matā'afa.

³² Branch spokespersons were Papāli'i Mālama for Sā Mōlī, Papāli'i Natuitasina for Sā Natuitasina and Le Tagalao Pitapola for Sā Talavou.

³³ Ah Mu, *Samoa Observer*, 13–15 June 2007.

³⁴ Pers. comm. Pastors Tipeni Solomon of Malie and 'Auatama Esera of Sāpapāli'i.

³⁵ According to 'Auatama Esera, Sāpapāli'i apparently were unaware of the court injunction or outcome of court initiated discussions.

³⁶ See list of petitioners, Appendix 1.

when the eligibility and subsequent crossing over of petitioners to the other side were considered.

On 18 June 2008, the Land and Titles Court ruled on the validity of Mōlī's installation. The court reaffirmed the 1939 decision (LC 853). It confirmed the first part of that decision, which stated that the eligible parties to the process of selecting a successor consisted of the three branches. It was satisfied that the appointment of the late Mālietoa Tanumafili II had confirmed the second part. However, on the third part, the court expressed dissatisfaction that the three branches had not met to deliberate over a successor. Consequently, the court could not confirm Mōlī's appointment.³⁷

4. *Was the Court's Decision a Fair One?*

On the basis of the court's 1939 ruling, only descendants of the three ancestors stipulated were eligible to participate in the process of selecting a successor to the Mālietoa title. Yet 31 petitions were received from 'non-1939' descendants (see Table 1). Thirteen had opposed the installation and 18 were in favour. Those who opposed included four petitioners whose positions on the installation were unknown as well as four who had changed sides from defending to opposing Mōlī's candidature. A notable party on the opposition was neighbouring Afega village, which with Malie village plays a major role in the installation. The 18 petitioners supporting the installation included the villages of Malie and Sāpapālī'i and some parties from the village of Si'umu. It also included a party led by a *tama'āiga* titleholder. While a strong majority of 'non-1939' descendants supported the installation, the court excluded this category from consideration in terms of its 1939 ruling.

Among the 20 petitioners recognised as falling within the three branches identified in the 1939 ruling, one was rejected,³⁸ reducing the number of petitioners to 19, with 14 opposing the installation and 5 in favour.³⁹ Among the 14 opposing petitions, seven were from Talavou, four from Natuitasina and three from Mōlī (see Table 2). Among the five in support of Mōlī, four came from within the Mōlī branch and one from Natuitasina. The fact that no support came from Talavou at first suggested unity within the branch, but a closer inspection indicated the Talavou branch was not spared of internal divisions.⁴⁰ In other words, an overwhelming majority (74% or 14 parties) opposed the appointment (against 26% or 5 parties).

Given these objections, it seemed the court could not rule otherwise than it did. Yet it is clear that the court rejected Mōlī's candidature, not because he was ineligible but because the third requirement of LC 853 had not been satisfied, namely, consultation among the three branches of 'Āiga Sā Mālietoa. For Mōlī and his supporters, the next important steps were to reconcile differences within Mōlī's branch and then with the other two branches.

5. *Attempt to Appeal the Decision*

In 2011, 14 petitioners sought leave to appeal the court's decision of June 2008 that quashed Mōlī's appointment.⁴¹ This petition was opposed by 20 parties who lodged objections against the application for leave to appeal. Those opposing the appeal consisted of: (1) members of the

³⁷ Fa'amasinoga o Fanua ma Suafa Samoa, LC 853 P1–P39, *E Uiga i le fia fa'amaonia po o le soloia o le nofo a Fa'amausili Papālī'i Mōlī na faia i le aso 14 Iuni 2007 i le Suafa 'Mālietoa' i Malie* [Land and Titles Court of Samoa LC 853 P1–P39, regarding the confirmation or annulment of the installation of Fa'amausili Papālī'i Mōlī held on 14 June 2007 to the Mālietoa title in Malie village].

³⁸ The claim by the party led by Taimalelagi Na'otala Talataulima Tilialo claimed descent from Natuitasina.

³⁹ Refer to list of petitioners from the three branches recognised in the 1939 decision, Appendix 2.

⁴⁰ The Ala'ilima family members submitted three separate petitions, all by brothers, one by Le Tagalao Pitapola, another by Leiatua Vaiao and another by Muagututi'a Maeaeafe. The recognised senior of Sā Talavou, Papālī'i Alema, did not appear in any of these petitions.

⁴¹ Based on the Land and Titles Act 1981, Sections 78 and 79.

TABLE 1: List of petitioners who do not qualify according to the 1939 court ruling Plaintiffs (opposed to installation of Mōli)

<i>No.</i>	<i>Leader</i>	<i>Other Mālietoa lines</i>	<i>Comment</i>
1	Elielia Taulapapa	Taulapapa	Oppose
2	Uitualagi Masuigamalie P Mea'ole	Fuaoleto'elau	Oppose
3	Nu'uiali'i Pea Tavita Afele	Ganasavea	Oppose
4	Aeoainu'u Hivi Lene	Tia	Oppose
5	Saena Tialino Penaia	La'auli	Oppose
6	Leiataua Filimaloata	Unknown	Unknown
7	Tuilaepa Niusila	Unknown	Unknown
8	Sailimalo Vesi Maeata'anoa	Unknown	Unknown
9	Su'a Maeata'anoa Seumanutafa	Unknown	Unknown
10	Vitaoa Peleiupe Fuatai	Unknown	Changed from supporters
11	Fata Pemila et al – Afega Village	Unknown	Changed from supporters
12	Seiuli Saoaumaga Lino ¹	Unknown	Changed from supporters
13	Seupule Fa'aoloseu	Unknown	Changed from supporters

Defendants (supported installation of Mōli)

No.	Leader	Other Mālietoa lines	Comment
1	Laupa Petelo	Savea	
2	Si'a Mano'o Kato et al - Malie	Unstated	Malie village
3	Sulusulumaivasa Aiva II	Ti'a	
4	Tofilau Lupematasila Nanai Misa Fa'amanu Ivara	Unstated	Unknown
5	Tupa'i So'oalo R. Tuimaleali'ifano L.	Tuitofa-'Aigaevalu Mālietoa	
6	Tuimaleali'ifano Va'aletoa Sualauvi et al	Tuitofa-'Aigaevalu Mālietoa Fitisemanu	Feagaiga
7	Leota Leulua'iali'i Itu'au Ale	Taulapapa	
8	Mauinatu Roy Etuati Mālietoa	Aeoainu'u	
9	Fuimaono Pule Ipu Ana Polataivao	Toatuilaepa	
10	Savea Loto Malaitai – Sapapāli'i	Unstated	Some of Sapapāli'i village
11	Lio Saveatama Toeieiu Tusiofo – Siumu	Unstated	Some of Siumu village
12	Lamatoe Leulua'iali'i	Saena Poao	Not clear if this is a Mālietoa line
13	Tofilau Filimaua T. Maosi	Unstated	Unknown
14	Li'omatua Fetalaiga Kirisome	Unstated	Covenant between Li'omatua and Mālietoa
15	Solomona Misikopa	Unstated	Unknown
16	Fa'amausili Lafituana'i Ale	Uitualagi	
17	To'omata Aki	Taulapapa	Change from plaintiff
18	Leiataua Lesa Seiuli T. Alualu II	Unstated	Unknown Change from plaintiff

¹Such petitioners pose a common dilemma. They oppose the method of appointment but not the nomination. I have regarded them as plaintiffs.

three main branches of Sā Mālietōā, including the new contender for the title, Papālii Mālietau Mālietoa; (2) 'non-1939' descendants from other branches of Sā Mālietōā, whose fundamental objection to the 1939 court ruling is that it precludes them from participating in the selection process (and fronting with their own candidates); and (3) others who sought to offer advice and commentary. One of the latter was Leota Leulualiali'i Itu'au Ale, who reportedly urged the court to pick the new Mālietoa.⁴² In rejecting leave to appeal the 2008 decision, Court President Tagaloa Tuala Kerslake

TABLE 2: Opinion among 19 petitioners within the recognised (three) branches of 'Āiga Sā Mālietoā on the installation of Mōli

<i>No.</i>	<i>Branch</i>	<i>Total</i>	<i>Oppose</i>	<i>Support</i>
1	Sā Mōli	7	3	4
2	Sā Natuitasina	5	4	1
3	Sā Talavou	7	7	0
	Total	19	14	5

was reported as stating that 'there were [sic] not enough evidence to satisfy the court for an appeal for a rehearing'.⁴³

The unity of the family of Sā Mālietoā was tenuous at best, as divisions among the three branches were aggravated by internal splits. For example, Mōli's candidature was opposed by his oldest brother's son, Papāli'i Mālietau Mālietoa, who also signalled an interest in contesting the title. Papāli'i has moreover publicly stated that he sees no agreement in the foreseeable future and that all three clans have unresolved 'internal issues'.⁴⁴

Similarly, the internal unity of the Talavou branch, though it seemed at first secure, soon vaporised. Disagreements occurred on the issue of who was to represent the branch at various family negotiations. At a proposed 2012 Christmas gathering of the three branches, friction appeared over representation of the Talavou branch between the Sāmoa-based spokesperson and the USA-based leader.⁴⁵

On other fronts, battles raged, as they have throughout the ages, among elite orator groups, mostly without satisfactory resolution over who has custody and rights of conferring *pāpā* titles – such as Gatoa'itele and Vaetamasoali'i associated with the Mālietoa title. Such rights enhance the *mana* and prestige of respective villages and their titled leaders. Contests between orator groups of 'Auimatagi of Malie on one side and Tuisāmau of Afega on the other fluctuate and vacillate, depending on the orators' respective command of history, language, leverage and nerve.

6. Are Current Court Procedures Adequate for Solving the Succession Dispute?

It seems clear that current mechanisms and processes for handling succession disputes are in dire need of reform, in line with modern circumstances that were unforeseen in the early 1900s. Specifically, for the Mālietoa dispute, a set of procedures incorporating information technology (such as an electronic filing system) and best international practices are needed to at least bring disputant parties of this large family to the table. The present system is time-consuming, remote from *matai*-governed village councils, expensive for families living overseas, and vulnerable to bureaucratic manipulation and political interference. This issue is recognised, and work has commenced in collaboration with the New Zealand Ministry of Justice in adopting modern technology and best practices.⁴⁶

While it may be possible, though challenging, for senior family elders to organise their individual branches through reconciliation and other processes, moving beyond the immediate branch to effect consultation with other branches can be a daunting task for family members under siege. And here, the court may need to take the initiative, independently,

⁴²According to Leota, 'because if it were left to the family "I can confirm it will not be done before the second coming of Jesus"', 'Mālietoa ruling in August', *Samoa Observer*, 8 July 2011.

⁴³'Āiga Vaisuai, 'Court rules against Mālietoa title appeal', *Talamua online*, 8 August 2011; Jasmine Netzler-Iose, 'Court rejects Mālietoa appeal', *Samoa Observer*, 7 August 2011.

⁴⁴Pers. comm., Papāli'i Mālietau Mālietoa, Apia 2011.

⁴⁵*Samoa Observer*, 3, 11, 12 and 25 September 2013.

⁴⁶<http://www.samoobserver.ws/other/legal/5539-justice-works-on-priority-cases>, accessed 23 June 2013.

with or without the prompting of branch elders. If the three branches of Sā Mālietoā authorised to select a successor can meet, there seem to be two alternatives.

One alternative, which builds on existing practices, is for the meeting to begin discussion towards an agreed set of procedures and criteria for identifying the best candidate(s) on merit. This agreement should include an exit clause to return to the court on any point of disagreement. Another is for all branches to agree to meet under the auspices of an independent party, such as a court official, functioning as facilitator and mediator. The mediator would provide a set of agreed procedures for all parties, who would also accept the mediator's decision as final.⁴⁷ Since all Sāmoans are related through the paramount titles, consideration should be given to engaging a mediator from outside, but perhaps within the Pacific region, familiar with the local systems and arbitration procedures. Each party should work through the mediator, submit nomination(s) and agree to hold a series of meetings to discuss the merits and demerits of each candidate until a short list of candidates is finalised. Over these meetings, a method could be proposed to work out by consensus a way to make a final decision.

In the event of more than two candidate remaining after the elimination process, voting could be conducted to eliminate the candidates or candidate with the least number of votes, until two are left for a final vote. In the event of an even number of ballots for both of the final candidates, a decision could be taken beforehand that the winner be decided by a simple toss of a coin. Alternatively, the names of the two remaining candidates could be returned to the court for a final decision.

Assuming the court takes responsibility for initiating and calling the different parties together, and compiling a set of procedures, this process hangs on two 'ifs' among the disputants: the ability, first, to identify the senior members of each branch and second, to secure cooperation for connecting with other senior branch leaders and other major stakeholders such as the political families. In the Mālietoa title dispute, senior members should be identifiable from the list of petitioners and their respective leaders, and the genealogical connections on court records. Among the three branches are persons of standing in the community, with professional qualifications and extensive experience in dealings among Sāmoa's political families, the church, tertiary education, the private and public sectors, unions and media, parliament, government, regional and international organisations. Such leaders are not in short supply in this huge family. Who could kick start the process? Who are the recognised senior members within the three branches?

Unless current rules governing succession are reviewed in light of rapid changes, the future of paramount titles (and *matai* titles in general) seems uncertain. While locals accept the role of the court in settling succession disputes, it is perhaps up to them to update and adapt the court's rules and procedures to 21st-century conditions. The 2008 and 2011 decisions over the succession to the Mālietoa title merely confirmed the 1939 decision. Yet, even in 1939, it was evident that the three branches of Sā Mālietoā were unable to initiate consultations among themselves without preying on each other.

As demands on family and community leadership change, the role of *matai* titles have adapted accordingly. As the Sā Mālietoā succession dispute drags on indefinitely, the future of the title and attendant family responsibilities becomes a matter of considerable conjecture. Instead of 'Who will be the next Mālietoa?' the more important question might be 'Will there be another Mālietoa?' And if family differences are eventually resolved, will the title regain its former *mana*? The court system has a huge responsibility in regulating the *matai* system. It is under pressure to reform to meet the changing conditions of families that simultaneously

⁴⁷Another was suggested by Mrs Maina Sāveali'i-Afamasaga. She suggested that as a *tama fefine* – female line – of Sā Mālietoa, Tuimaleali'ifano could have been a facilitator/mentor in bringing the three warring branches to the table. Unfortunately, the current titleholder's credibility was compromised by participating in the court proceedings in supporting Mōli. Pers. comm. with Mrs Maina Afamasaga, daughter of Sāveali'i Ioane Viliamu Mālietoa, Fa'ato'ia, March 2011.

coexist under the *matai* system and comprise citizens of a constitutional democracy. Unless reforms are seriously engaged by stakeholders, paramount *matai* titles like the *tama'āiga* Mālietoa title, risk becoming – not unlike the Tui Kaba na Vunivalu title of Bau in Fiji⁴⁸ – a dust heap of history, in a word, a relic.

Postscript: On 12 July 2013, the author was informed that, at a meeting of all three branches, the attempt to agree on a single candidate failed. They all agreed to disagree and reaffirmed the role of the court as the final arbiter for the family.

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⁴⁸Vacant since the death of Ratu Sir George Kadavulevu Cakobau in 1989. His *matai* title was Pesetāmanaia of Matāutu, Savai‘i.

APPENDIX 1: List of petitioners in 2008 and kin connections to Mālietoa title

<i>Plaintiffs (opposed to installation)</i>			
<i>No. Leader of petitioning group</i>	<i>Plaintiff</i>	<i>Descendants of</i>	
		<i>Mōlī Natuitasina Talavou</i>	<i>Other lines</i>
1	Le Tagaloa Pitapola Ala'ilima		1
2	Aiono Su'amatai'a Fanaafi	1	
3	Elielia Taulapapa		1
4	Uitualagi Masuigamalie P. Mea'ole		1
5	Papāli'i Malesi	1	
6	Papāli'i Mālietau Mālietoa	1	
7	Taimalelagi Na'otala		1
8	Nu'uiali'i Pea Tavita Afele		1
9	Leuafa'alanu		1
10	Leiataua Vaiao Ala'ilima		1
11	Aeoainu'u Hivi Lene		1
12	Papāli'i Siliva		1
13	Leiataua Lesa Seiuli T. Alualu II	Change to support	Line unknown
14	Papāli'i Petone		1
15	Muāgututi'a Maeaacefe		1
16	Papāli'i Natuitasina Poumau	1	
17	Leiataua Filimaloata		1
18	To'omata Aki	Change to support	1
19	Saena Tialino Penaia		1
20	Tuilaepa Niusila		1
21	Papāli'i Taimalelagi Afelē	1	
22	Aiono Tile Gafa	1	
23	Sailimalo Vesi Maeata'anoa	Position unknown	Line unknown
24	Su'a Maeata'anoa Seumanutafa	Position unknown	Line unknown
<i>Defendants (supported installation)</i>			
<i>No. Leader of petitioning group</i>	<i>Defendants</i>	<i>Descendants of</i>	
		<i>Mōlī Natuitasina Talavou</i>	<i>Other lines</i>
1	Papāli'i Saitumua	1	
2	Laupa Petelo II		1
3	Papāli'i Taeu Masipau	1	
4	Si'a Mano'o Kato et al — Malie		Malie
5	Saofia Omeli	Change to opposition	1
6	Maualaivao Neru II	1	
7	Sulusulumaivasa Aiva II		1
8	Tofilau Lupematasila Nanai Misa F. I.		1
9	Tupa'i So'oalo R. Tuimaleali'ifano L.		1
10	Fa'amausili Papāli'i T. T. Mōli	1	
11	Vitaoa Peleipu Fuatai	Change to opposition	Line unknown
12	Fata Pemila et al — Afega	Change to opposition	Afega
13	Marilyn M. T. Figiel	Change to opposition	1
14	Tuimaleali'ifano Va'aleto'a Sualauvi		Tuitofa-'Aigaevalu Mālietoa Fitise manu
15	Leota Leulua'iali'i Itu'au Ale		1
16	Papāli'i Nautu Kome	1	
17	Mauinatu Roy Etuati Mālietoa		1
18	Fuimaono Pule Ipu Anae Polataivao		1
19	Savea Loto Malaitai — Sāpapāli'i		Sāpapāli'i
20	Seiuli Saoaumaga Lino ¹	Change to opposition	Line unknown
21	Lio Saveatama Toeieiu Tusiofo — Siumu		Siumu

(Continued)

APPENDIX 1: Continued.

<i>No. Leader of petitioning group</i>	<i>Defendants</i>	<i>Defendants (supported installation)</i>	
		<i>Descendants of</i>	
		<i>Mōlī</i>	<i>Natuītasina Talavou</i>
22	Seupule Fa'aoloseu	Change to opposition	
23	Lamatoe Leulua'iali'i		Line unknown
24	Tofilau Filimaua T. Maosi		1
25	Li'omatua Fetalaiga Kirisome		1
26	Solomona Misikopa		1
27	Fa'amausili Lafituana'i Ale		1

¹Such petitioners are not uncommon in opposing the method of appointment but supporting the nomination. Ultimately I list them with the opposition.

APPENDIX 2: List of petitioners who qualify according to the 1939 court ruling and their connections to the Mālietoa title

<i>No.</i>	<i>Leader</i>	<i>Plaintiffs (opposed installation of Mōlī in 2007)</i>			<i>Comments</i>
		<i>Descendants of</i>			
		<i>Mōlī</i>	<i>Natuītasina</i>	<i>Talavou</i>	
1	Le Tagaloa Pitapola Ala'ilima			1	
2	Aiono Su'amatai'a Fanaafi	1			
3	Papāli'i Malesi	1			
4	Papāli'i Mālietau Mālietoa	1			
5	Leuafa'alanu			1	
6	Leiataua Vaiao Ala'ilima			1	
7	Papāli'i Siliva			1	
8	Papāli'i Petone			1	
9	Muāgututi'a Maeaacefe			1	
10	Papāli'i Natuītasina Poumau		1		
11	Papāli'i Taimalelagi Afelē		1		
12	Aiono Tile Gafa		1		
13	Saofia Omeli		1		Change from defendants
14	Marilyn M.T. Figiel			1	Change from defendants
	Total plaintiffs among 3 branches	3	4	7	

<i>No.</i>	<i>Leaders</i>	<i>Defendants (supported the installation of Mōlī in 2007)</i>			<i>Comments</i>
		<i>Descendants of</i>			
		<i>Mōlī</i>	<i>Natuītasina</i>	<i>Talavou</i>	
1	Papāli'i Saitumua		1		
2	Papāli'i Taeu Masipau	1			
3	Maualaivao Neru II	1			
4	Fa'amausili Papāli'i T.T. Mōlī	1			
5	Papāli'i Nautu Kome	1			
6	Taimalelagi Na'otala		1		Change to defendant; subsequently disqualified
	Total defendants among 3 branches	4	2		