

## Tonga Flying Fish Co. Ltd. and Others v. Kingdom of Tonga and Travis

Supreme Court of Tonga, Nuku'alofa

Martin J.

26 February 1987

*Torts - negligence - duty of Care - police owe duty of care on executing a warrant.*

10 On 11 August 1986 a warrant for the arrest of the *M.V. Rainbow Runner* was issued by Mr Travis. The warrant was addressed to "each and all of the Police Officers within the Kingdom of Tonga", and directed them "to arrest the ship *M.V. Rainbow Runner* . . . and keep the same under safe arrest until you shall receive further orders from us." On the instructions of the Chief Superintendent Kolokihakaufisi the vessel remained moored to Vuna Wharf and was guarded twenty four hours a day by a police officer. The police made it clear that nothing could be done with the vessel without the permission of the police. On 23 August the weather deteriorated and the vessel began to be pounded against the wharf by the sea. P.C. Sipa informed his superior who took no action.

20 Mr Herman went to the Central Police Station to ask permission to move the vessel but did not find anyone who could give the authority. By 3.30 p.m. on 24 August, P. C. Sipa was frightened to remain on the vessel and went to report to his superior who took little notice. By 7 p.m. the vessel was badly damaged and taking water. Chief Superintendent Kolokihakaufisi directed the Fire Service to pump out the vessel and temporary repairs were made. At 7.45 a.m. on 25 August P. C. Sipa reported the situation to the Central Police Station. At 3.30 p.m. two crew members went to the police station and reported water coming in very rapidly. No action was taken. At 10 p.m. P.C. Sipa reported the situation and the Fire Service was again sent but by then the vessel had sunk.

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### HELD:

(1) The police owe a duty of care to the owners and operators of the vessel and to the person on whose behalf the vessel was arrested: *l.* 220.

*Anns v. Merton London Borough Council* [1978] A.C. 728; [1977] 2 W.L.R. 1024; [1977] 2 All E.R. 492 applied.

- (2) The standard of care required is decided by balancing the degree of risk, the likely consequences, and nature of the precautions required: *l.* 230.
- (3) The police were negligent in that they knew the vessel was likely to be damaged while tied to the wharf in rough seas and did not permit the owners to move it in time to avoid severe damage: *l.* 250.
- 40 (4) The measure of damages is the value of the vessel, plus any consequential loss arising from its destruction: *l.* 270
- The Liesbosch Dredger (Owners) v. Edison Steamship (Owners)* [1933] A.C.

449; [1933] All E.R. Rep. 144 (sub nom *The Edison*) applied.

*D. Tupou* for the plaintiff  
*W.C. Edwards* for the defendant

## MARTIN J.

### Judgment:

In this consolidated action Tonga Flying Fish Co. Ltd. ("the company"), its directors Mr Duncan and Mr Herman, and Mr Travis make various claims against the Kingdom of Tonga in respect of the alleged negligence of the Police Department following the arrest of the *M.V. Rainbow Runner*. It was arrested at the instance of Mr Travis, but Mr Edwards properly conceded that they cannot succeed against him. The company's claim against him will therefore be dismissed. There is a counterclaim by the Kingdom against Mr Travis for execution costs arising from the arrest of the vessel.

### The Facts

The following background emerges from the mass of evidence:

On 11 August 1986 this Court issued a warrant for the arrest of the *M.V. Rainbow Runner*. As I have found in the previous action, the owner of the vessel on that date was Mr Duncan, but Mr Herman held its documents as security for money advanced. It was being operated by the company, in which Mr Duncan and Mr Herman are directors and substantial shareholders.

On 12 September 1986 Mr Duncan and Mr Herman transferred their respective interests in the vessel to the company.

On 11 August 1986 the vessel was seaworthy and in good running order. It was being used by the company for fishing in Tongan waters. The company intended to continue and expand these operations.

The warrant was issued by Mr Travis to secure sums claimed by him in the previous action. It was addressed to "each and all of the Police Officers within the Kingdom of Tonga", and directed them "to arrest the ship *M.V. Rainbow Runner* . . . and to keep the same under safe arrest until you shall receive further orders from us." The vessel was arrested the same day. No further orders were ever given by the Court to the police. No security was given and the vessel remained under arrest. On the instructions of Chief Superintendent Kolokihakaufisi it remained moored to Vuna Wharf, and it was guarded twenty four hours a day by a police officer.

On 18 August 1986 Mr Herman went to the boat with a co-director Mr Vamani. He intended to instruct the crew to do some painting and general maintenance. The police guard, Tevita Hafoka, had been instructed not to allow any work to be done on the boat, and that nothing should be removed or taken on board. He told Mr Vamani this. Mr Vamani says that, when pressed, he told them "If the boat sinks we (i.e. the Police Department) will pay for it." P.C. Hafoka denies this. It makes no difference whether he used those words or not. He made it quite clear to Mr Vamani and Mr Herman that nothing could be done with the boat without the permission of the police. Mr Vamani asked if they could pump out the water which had accumulated from washing down. This request was also refused.

Nothing of importance happened on 19 August. Superintendent Aleamotu'a recalls certain events on that day, but I am satisfied that he is mistaken about the

date. These events took place on the 20th.

On 20 August Mr Herman and Mr Vamani went to the boat. It had been washed down and needed pumping out. Mr Vamani asked the guard for permission to do this. It was refused. Mr Herman went to see Mr Travis's counsel, Laki Niu. Mr Niu wrote a letter to the officer in charge at the police station, Nuku'alofa.

#### RE: RAINBOW RUNNER

100 This is to confirm that it is permissible for the captain, crew and owner and charterer of this vessel to carry out any work including the running of the engine of the vessel while she is tied up under arrest. It is essential that the boat is maintained and properly preserved during its arrest.

I do not consider it necessary that an order from the Court has to be made to allow this work to be carried out.

Yours faithfully

(Signed) Laki Niu

Counsel for Travis in whose favour the arrest was made.

The reference to an order of the Court was made because at the time there was no judge in the Kingdom who could make such an order.

110 Mr Herman and Mr Vamani took that letter to the police station. Mr Vamani handed the letter in. They saw Superintendent Aleamotu'a. He says he did not see Mr Niu's letter. There is dispute as to what was said. The details don't matter. What is important is that Superintendent Aleamotu'a clearly appreciated that certain work needed to be done to preserve the boat. He gave instructions that pumping could be done.

For some reason his order was not passed on. During the evening of that day Mr Niu telephoned Chief Superintendent Kolokihakaufisi who immediately gave his consent. The pumping was carried out soon afterwards.

120 It had again been made clear by the police that nothing could be done to the boat without their consent. They had also been made aware, if it were necessary, of the need for routine pumping to be done.

All was well until Saturday 23 August. A strong wind warning was broadcast. During the afternoon the wind increased and the sea became rough. The boat began to pound against the wharf. Conditions became worse. The guard, P. C. Sipa, was concerned. He sent a message to his superior, Inspector Kavaliku. Inspector Kavaliku went to the wharf. He told me "the boat was pounding on the wharf. . . . It was dangerous for the boat . . . It needed moving from the wharf . . ." He evidently did not consider that his problem. He took no action.

130 Somebody must have done. Later that evening the police contacted Mr Herman asking him to come to the wharf. He went, as did Mr Vamani. The sea was very rough. The boat was still beating against the wharf. The old tyres used as fenders were damaged and inadequate. They went to the Central Police Station to ask permission to move the boat. They saw Sergeant (then Acting Inspector) Siona Kava. He had no authority to give permission. He told them to find Superintendent Aleamotu'a. They went to that officer's home but he was out. They went to various other places where he might be but could not find him. By now they were extremely

concerned. They returned to the wharf and did the best they could. They brought more old tyres and tied them between the boat and the wharf. They returned home at about 2 a.m.

140 Next morning, Sunday 24th August, the weather improved slightly. P.C. Sipa sent a report on the previous night's events to the police station. No checks were made by any senior officer to see if the boat was all right.

In the afternoon the storm developed again. The winds became very strong. The waves threw the boat against the wharf. By 3.30 p.m. P.C. Sipa was frightened to remain on board. He took a crewman to the police station. Telephones were out of order. He got a lift to police headquarters at the Police Training School. He reported what was happening to his immediate superior, and was taken back to the wharf. His report was passed to Inspector Kavaliku, who visited the wharf. This was the time, above all, to do something to protect the boat. He took little notice of it. He returned to his office and telephoned the Chief Superintendent for permission to use his vehicle as shelter for the guard. He agreed that the boat needed to be moved, but he had no power to authorize that. He did not tell the Chief Superintendent this. He said "I assumed he would understand."

150 Superintendent Aleamotu'a was off duty that day, but he visited the wharf while P.C. Sipa was away. He realized the danger to the boat. He went to the police station and gave instructions for a police driver to fetch the boat's captain, Taufau, and get the boat moved away from the wharf. This order was given around 4.30 p.m., and radioed to the Police Mobile Unit. It was still not treated with any urgency. The driver Nailone Panuve, finished what he was doing and then went for Captain Taufau at around 6 p.m. He knew where he lived, and went to his home. Captain Taufau was unable to come. Nobody told me why. Nailoni reported this and at 6.25 p.m. was told to fetch Mr Herman. He went to Mr Herman's house and told him that the boat needed moving from the wharf. (Mr Herman of course had told the police this twenty four hours earlier.) He was taken to the wharf at around 7 p.m.

160 By this time the boat had been badly damaged. Water was coming in rapidly. Mr Herman rang Mr Vamani, who came to the boat. They found two holes in the forward hold and there was a leak they could not see in the engine room. Only one foot of the engine was above water. A diver tried to plug the holes without success. Mr Herman drove home and rang Mr Niu. He telephoned Chief Superintendent Kolokihakaufisi. He immediately directed the Fire Service to go to the wharf to pump out the vessel. They arrived soon after 11 p.m., and pumped until 7.30 a.m. next morning, when the water was all removed.

170 Pumping revealed the two holes in the forward hold and a gap between the planks in the engine room. Temporary repairs were done but water continued to come in. The ship's pump could not be used because of water damage to the main engine.

At 7.45 a.m. on Monday 25 August P.C. Sipa reported the situation to the Central Police Station, expecting instructions. None were sent. Water continued to come in. At 3.30 two crew members, Oscar Gutenbeil and Sepo Davobalava went to the police station. They reported that water was coming in very rapidly. No action was taken and they went away.

180 The boat continued to take water. Eventually at 10 p.m. P.C. Sipa went to the police station to report the situation. A message was passed to the Chief Superintendent who sent the Fire Service again. They arrived at around 11.45 p.m. By then it was too late. The boat had sunk.

I find as a fact that by the time the order was given by Superintendent Aleamotu'a on 24 August the damage had been done. It would not have saved the boat to move it as it was. The engine had been substantially immersed and it is most unlikely that it would have started if they had tried.

That is what happened. Now I must consider the law.

### The Duty of Care

190 The warrant directed the Police to "... keep [the vessel under safe arrest. . . ." Mr Tupou properly conceded that they were under a duty of care to the owners of the vessel. He argued that four things were necessarily implied:

- (i) The vessel should not be allowed to "run away";
- (ii) The vessel should be kept free from damage;
- (iii) Nothing should be put on to or removed from the vessel; and
- (iv) The vessel should be kept tied to the wharf.

200 I agree with propositions (i) and (iii); (ii) is too widely stated. Proposition (iv) cannot be implied from the terms of the warrant.

The police were under two sets of obligations. First, their duty to the court to take all reasonable steps to preserve the security which the vessel represented; secondly, the duty of care on the "neighbour" principle. I adopt the reasoning of Lord Wilberforce in *Anns v. Merton London Borough Council* [1978] A.C. 728, 751-752; [1977] 2 W.L.R. 1024, 1032; [1977] 2 All E.R. 492, 498.

210 The position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise . . . .

220 Applying that reasoning, it is clear that carelessness on the part of the police would be likely to cause damage to the owners and operators of the vessel. The police therefore owed a duty of care to the owners and operators. In the particular circumstances of this case, I hold that they owed a similar duty of care to the person on whose behalf the vessel was arrested. The purpose of arrest is to provide security for a claim yet to be litigated. If that security is destroyed, the claimant has lost something of value. It makes no difference that his claim has yet to be established. There is "sufficient relationship of proximity or neighbourhood" between the police and Mr Travis.

### The Standard of Care

230 To say that the standard required is that of the man of common prudence is to

beg the question. The question has to be decided in each case by balancing the degree of risk, the likely consequences, and the nature of the precautions required.

The degree of risk depended on the weather. While it remained calm, there was no risk; when there was a storm, there was obviously a high degree of risk that the vessel would be damaged by being pounded against the wharf.

The precautions required were simple; permit the owners to move the vessel from the wharf before damage is done. A police officer would have remained on board to ensure that the boat was not removed. It was not sufficient merely to put out more tyres as fenders, in very bad weather.

#### 240 Was The Duty Of Care Complied With?

The police should have been aware of the risk. A strong wind warning was broadcast on Saturday 23 August. The police were in fact aware of the risk. During the afternoon P. C. Sipa sent a message to Inspector Kavaliku, who came and saw and did nothing. That evening Mr Herman and Mr Vamani went to the police station to ask for permission to move the boat. Nothing was done. There was said to be no one available who could give that order.

250 On 24 August P. C. Sipa again reported the danger. Inspector Kavaliku came again. He saw what was happening, but took no action in respect of the boat. Superintendent Aleamotu'a took action, but that was too late. The damage had been done and the boat was taking water rapidly.

Even then the boat could have been saved. It was pumped out and temporary repairs done. It was obvious that further pumping would be required until the leaks could be properly repaired. During the afternoon of Monday 25th two crew members went to the police station to report that water was coming in fast. If the Fire Service had been sent for them the boat could have been kept afloat. That message was not passed on. Action was only taken when P. C. Sipa went to the Police Station at about 10 p.m. By then it was too late.

260 I find that the police were negligent in that they knew the vessel was likely to be damaged, and was in fact being damaged, while tied to the wharf in rough seas; but they did not permit the owners or operators to move it in time to avoid severe damage.

270 Mr Tupou argued that even in these circumstances police liability is limited; that special considerations apply. He said that the police are acting on the instructions of the Court; and that if they comply with the terms of the warrant they are protected against all action. There is a general rule that no liability attaches to a purely ministerial officer for acts done in execution of an order of the Court. That is because the process of execution necessarily involves taking certain steps which would be unlawful but for the requirements of the Court. Any such action is protected. But that does not relieve that person of the normal duty of care. In any event the police have not complied with the terms of the warrant: they have not kept the vessel under "safe" arrest.

#### Quantum

I will deal first with the loss sustained by the company, now both owner and operator of the vessel.

Subject to the rules as to remoteness of damage, the injured party should be placed in the same position as he would have been but for the defendant's

negligence. Where, as here, something is completely destroyed, the measure of damages is the value, plus any consequential loss arising from its destruction. The basis upon which damages should be assessed in circumstances such as these were established in *The Liesbosch Dredger (Owners) v. Edison Steamship (Owners)* [1933] A. C. 449; [1983] All E.R. Rep. 144 (sub nom. *The Edison*).

In that case the plaintiffs' vessel, a dredger, was sunk. Damages were assessed as its value to the plaintiffs as a profit earning dredger at the time and place of her loss. This included (i) the market price of a comparable vessel (ii) the cost of adapting it to the plaintiffs' requirements (iii) the cost of transporting it to the place where she was working (iv) compensation for disturbance and loss until a date when a substitute could reasonably be available to start work, including overhead charges and the expense of staff and equipment reasonably incurred, but wasted and (v) interest on the capital sum from the date of the loss. The case has been criticized and distinguished and explained, but remains a reliable guide in the circumstances of this action. It shows the proper way to assess the cost of putting the company in the position it was in before 26 August 1986 with a comparable fishing boat properly equipped for their business.

I heard evidence on this aspect from Mr Travis for the plaintiff company and Mr Billett for the defendants. Mr Travis is an experienced master mariner. Mr Billett is an experienced and highly qualified marine engineer and surveyor. Both are familiar with the Pacific area. As I would expect, they agreed on many points.

*(i) The market price of a comparable vessel*

Mr Travis and Mr Billett agreed that a boat similar to the *Rainbow Runner* could be bought in Taiwan for U.S.\$25,000. They agreed that it would be reasonable to replace the Taiwanese ammonia refrigeration system with a Freon gas system for work in the tropics. Mr Billett would therefore look for a boat with a defective refrigeration system which he would hope to buy for U.S.\$20,000. That assumes that such a boat is available, which is speculative. I take the replacement cost at U.S.\$25,000.

*(ii) The cost of conversion*

Mr Travis based his calculations on the need to transfer the replacement vessel to Fiji for conversion, where he would install pulley drive compressors, two new diesel engines and a new generator. The boat would then have to be taken to Tonga. Mr Billett said the conversion should be carried out in Taiwan where 110 volt sealed unit Freon compressors are available; these could be driven by existing alternators, thereby avoiding the cost of two diesels and one alternator, and the additional fitting costs; it would also avoid the need to call at Fiji. I accept Mr Billett's reasoning on this point. He estimated the cost at U.S.\$10,000–12,000. As prices seldom go down. I take the cost of conversion at U.S.\$12,000. I accept Mr Travis's estimate of the cost of additional safety and electronic equipment at U.S.\$3,000, making the total conversion cost U.S.\$15,000.

*(iii) The cost of transfer to Tonga*

Mr Travis and Mr Billett agreed on most of these costs. I accept that the voyage would take thirty days, with a five-man crew. They agreed

	U.S.\$
Fuel costs	10,000
Air fares for crew	5,000
Port dues	300

On the cost of provisions, Mr Travis based his estimate on U.S.\$3 per day per man. Mr Billett took the plaintiff's own figures for crew cost from the company's private placement memorandum. This (at p. 36) shows provision costs at \$2.35 per day. This figure is based on experience in Tonga. Provisions would have to be bought in Taiwan, where prices are likely to be higher. I therefore adopt Mr Travis's figure of \$3 per day which gives a total provisions cost of  $30 \times 5 \times \$3 = \$450$ .

The other matter they disagreed about was the wages of the crew. Mr Travis estimated these for one month as

	U.S.\$
Master	1500
Engineer	1000
Mate	700
Two crew	<u>1000</u>
	<u>4200</u>

Mr Billett took his crew costs from p. 36 of the company's memorandum. These show the costs for operating as a ferry to and from a larger vessel operating as a "quasi-stationary platform". I also heard evidence from Laki Shuster, employed by Warner Pacific Line, as to the wages paid to their crew on a vessel of similar size to the *Rainbow Runner*. These total T.\$2642 per month. Applying the exchange rate used throughout the trial of T.\$1 to U.S.\$1.49 that is the equivalent of U.S.\$1773. That is not very different from Mr Billett's figure. He pointed out that the trip from Taiwan to Tonga would involve no loading or unloading and he would expect the crew to accept lower rates. I accept Mr Billett's reasoning and assess the crew's wages at U.S.\$1900. This makes the total cost of transfer to Tonga, U.S.\$17,650.

(iv) *Compensation for loss of use*

The company relies on projected figures in the memorandum. This was prepared by Mr Duncan on the basis, he says, of his extensive experience. Insofar as that document purports to show the actual income and expense of the proposed business, I view it with considerable reserve. Mr Duncan has no experience of commercial fishing in this area - this was to be a new project. It is a self serving document. It was designed to encourage people to invest in the project. It assumes that there would be no serious breakdown on what in my view is an elderly and rather suspect boat. It does not take into account that the hurricane season falls within the period of projected loss of profit. It assumes a constant supply of lobster when as stated on p. 13 "it is possible that its projections relating to the lobster harvest potential are overstated." It assumes that there would be no problems over shipment to the United States. It assumes no initial marketing problem in the United States.

I observe from pp. 26 and 27 that four lobster harvesting cycles were completed at some stage. I was given no figures about that. The one trip I was told about was in the nature of a trial run, and should have resulted in a small profit when the catch was sold locally. I accept that the proposed project would have been operated differently. But there is no hard evidence of loss of profit. The venture was still at the speculative stage and I cannot award damages on the basis of speculation.



Accordingly I allow nothing for loss of profit.

Certain expenses have continued. They have had to be met although the company was unable to operate its business. The company is entitled to recover those. They are pleaded at T.\$56,443. This figure is taken from p. 31 of the memorandum. It shows the estimated operating cost for July 1986 inclusive of the cost of buying fish and operating the boat. Neither of those expenses has been incurred.

380 The only continuing expenses are the upkeep of premises and the salaries paid by the company to Mr Duncan, Mr and Mrs Herman, and Mr Vamani. If the ship's crew were not laid off they should have been in order to mitigate the company's loss. These monthly expenses are shown at p. 35 of the memorandum and were confirmed by Mr Duncan as:

	U.S.\$
House rental	300
Mr Duncan's salary	1000
Mr and Mrs Herman's salary	2500
Mr Vamani's salary	<u>750</u>
TOTAL	<u>4550</u>

390 Mr Duncan says he is entitled to a further U.S.\$5000 per month from a related company, International Sea Food Exchange Inc. (formerly Nuku'alofa Fish Co. Inc.). If this is an expense thrown away by reason of the loss of the vessel, it is a loss incurred by a company which is not a party to this action and not by Mr Duncan personally. I do not therefore include it in this calculation.

I am asked to allow a period of six months for loss and expenses. I agree that this would have been a reasonable period within which the company could have acquired a replacement vessel, had it been financially able to do so.

Under this head I therefore allow  $6 \times \text{U.S.}\$4550 = \text{U.S.}\$27,300$ .

400 The entire contents of the boat were lost. I have been shown an inventory. Some of the items are included in the U.S.\$3000 allowed for additional safety and electronic equipment. Nobody has put a value on the other items. I am not entitled to guess. I therefore make no further allowance for these items.

The total damages to be paid by the Kingdom of Tonga are:

	U.S.\$
Cost of replacement vessel	= 25,000
Cost of conversion	= 15,000
Cost of transfer to Tonga	= 17,650
Compensation for loss of use	= <u>27,300</u>
410 A TOTAL OF	= <u>84,950</u>

Applying the exchange rate used throughout the trial (almost exactly the rate which applies today) of U.S.\$1 = T.\$1.49 this converts to T.\$126,575.50.

(v) Interest

On the principle outlined in *The Edison* the company is entitled to interest from the date of the loss of the vessel on 25 August 1986 = 185 days. I allow interest at 10% per annum.

$$126,575.50 \times 10\% = 12,657.55 \times 185/365 = \text{T.}\$6415.47.$$

**Mr Travis's Claim**

At the date when these proceedings were issued Mr Travis's entitlement had not been ascertained. That has now been done and I have entered judgment in his favour for T.\$27,795.

The company's judgment against the Kingdom of Tonga represents compensation for the loss of the vessel which was security for Mr Travis's claim. Subject to the counterclaim, he has first claim on those damages as he would have had against the value of the vessel, if sold, or against any security in its place.

**The Counterclaim**

The Kingdom of Tonga claims against Mr Travis certain expenses incurred in connection with the arrest of the vessel. These are:

- (i) Police rations from 11 August to 6 December 1986, when the guard was discontinued.
- (ii) Fire Service expenses for pumping out the vessel.
- (iii) Petrol expenses for patrol vehicles since 6 December 1986.

The vessel was under arrest for fourteen days only before it sank. The police are entitled to recover from Mr Travis any expenses properly incurred during that period. The guard had to live on the boat and it was reasonable to supply him with meals. He was unable to carry out normal police duties during that period and Mr Travis should therefore bear that cost. I accept the police assessment of T.\$13.50 per day for all meals, and allow  $14 \times T.\$3.50 = T.\$189$ .

Having failed in their duty of care they can recover no expenses incurred after the boat sank. Nor can they recover the cost of pumping out the vessel which was necessitated by their own negligence.

Any expenses of the warrant were also secured on the vessel and Mr Travis is entitled to recover these also out of the damages which now represent the vessel.

Judgment will therefore be entered in these terms:

- (1) The Kingdom of Tonga do pay damages totalling T.\$126,575.50 apportioned
  - (i) to the plaintiff Mr Travis T.\$27,795 + T.\$189 = T.\$27,984.
  - (ii) to the plaintiff Tonga Flying Fish Company Limited T.\$98,591.50 plus interest of T.\$6415.47; and to pay the costs of both plaintiffs.
- (2) The plaintiff Mr Travis do pay to the Kingdom of Tonga T\$189, to be set off against the sum payable to him under paragraph 1 of this order.

In view of the small amount recovered I make no order for costs on the counterclaim.

*Reported by: T.K.F.*