

P.A. MANAGEMENT -v- GOVERNMENT SHAREHOLDING AGENCY and THE ATTORNEY GENERAL

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 20 of 1987

Hearing: 6 July 1992

Ruling: 10 July 1992

F. S. Waleilia for the Plaintiff

G. Martin with J. Corrin for the First Defendant

P. Afeau for the Second Defendant

MURIA ACJ: The plaintiff's claim had been dismissed in this case and Ms Corrin now asks for costs in this matter. Ms Corrin says that in view of the complexity of the case, counsel from overseas had been engaged and as such under paragraph 43 of Appendix J, Part I - Scale of Costs, the Court should certify that counsel's fees be increased above the rates provided under Appendix J. Mr Waleilia, on the other hand, argued that attempts had been made to resolve the case without having to go to Court and so the costs of engaging overseas counsel by the first defendant was not necessarily a matter that should fall heavily on the plaintiff. In any case, Mr Waleilia submitted that for the Court to exercise its discretion and award costs higher than those provided under the Scale of Costs, evidence must be adduced to justify the increase requested.

Paragraph 43 of Appendix J states as follows:

"43 In any case a Judge of the Court either at the trial or on notice of motion made within 14 days after judgement is pronounced may certify for an increase in any of the above charges, of such amount as he thinks fit having regard to all the circumstances of the case."

This is an area where little has been said about in the past. I think it is now time that guidelines be now set in order to assist practitioners and those involved in the taxation of costs.

We now have Solomon Islanders becoming more and more involved in litigation and I think it is only right that the cost of bringing in overseas counsel should normally be borne by the party engaging him. It may well be that the bills put in by overseas

counsel involve large amounts which I think justifies the need to have such costs closely watched.

I desire to state some of the factors which should be taken into account when considering whether or not costs of engaging overseas counsel should be allowed. Such factors includes the legal issues of complexity in the case, the expertise reasonably required in view of the nature of the action, the nature and the extent of the rights affected, the size of the legal practice and the need to keep costs as low as possible.

Although the present case involved difficult questions of law, I do not think it is one that can be said to be exceptionally difficult. The issues raised, in my view, do not necessarily required the expertise which cannot be found here. I believe resident counsel are able to handle issues of the kind involved in the present case. The amount of the claim involved should not be used as a determining factor.

However, I can see that for a time overseas counsel may still be engaged. This, I think must be appreciated as the expertise and experience from overseas counsel will be of benefit to our own legal practitioners here. One can only hope that in the not-too-distant future, there will be enough legal practitioners here who will have the expertise and experience to handle a good deal of the heavy civil work and other complex cases.

Turning now to paragraph 43 of Appendix J, I agree that the Court does have discretion to certify for an increase in any of the charges specified in Appendix J. The Court will, however, exercise that discretion *"having regard to all the circumstances of the case"*. I have heard no evidence to support the claim for the increase in the costs but I think I can fairly decide on the matter based the submission by counsel and the circumstances of the case.

Thus having heard counsel and taking into account all the circumstances of the case I conclude that it would not be appropriate to certify for an increase of costs above those specified in the Scale of Costs in Appendix J as requested in this case.

(G.J.B. Muria)
ACTING CHIEF JUSTICE