

ALBY AND DELMAE LOVI -V- H.R. KOGA and Others

**High Court of Solomon Islands
(Muria CJ.)**

Civil Case No. 171 of 1991

Hearing: 5 May 1994

Judgement: 9 May 1994

F. Waleilia for Plaintiffs
T. Kama for the Defendants

MURIA CJ: The plaintiffs have applied to amend the order made by this Court on 29 April 1993, particularly paragraph one (1) of the order which states that the defendants are relinquished from further liability to the plaintiffs in this action. The plaintiffs now say that the defendants should not be relinquished from liability as there is still an amount owing by them to the plaintiffs. The amount still owing is said to be \$5,394.37.

Mr. Waleilia who appeared for the plaintiffs also contended that the amount of \$5,394.37 includes the legal fee of \$2,921.00 payable to Mr. A. Nori who was he plaintiff's former solicitor. However, if that legal fee has not yet been paid into Court by Mr. Nori, then the amount owing to the plaintiffs is \$2,473.33.

On the other hand Mr. Kama submitted that the defendants had already satisfied the judgement debt and are now relinquished from any further liabilities.

Both parties agreed that the amount due under the judgement debt plus costs as at 10 October 1992 was \$25,158.82. The plaintiffs agreed they received the sum of \$22,685.49 which is made up of :

From NPF	6,325.59
From SICHE	10,527.00
From H/Court	4,772.70
" "	807.00
" "	<u>253.20</u>
	<u>22,685.49</u>

Whilst the amount of \$22,685.49 represents the actual amount received by the Plaintiffs, it does not necessarily mean that that was the amount paid by the defendants in

satisfaction of the amount owing under the judgement debt. I say this because the record shows clearly the following:

9/6/92	NPF Payment to Plaintiffs	6,325.59
19/6/92	SICHE payment to Plaintiffs	10,527.00
8/10/92	Defendants Deposited in favour of plaintiffs \$8,500.00 (GTR No. 229397) but only \$7,721.20 was used to settled claim under CC171/91 (see Dep. Voucher No. 217/92)	7,721.20
3/12/92	Def. Deposited in favour of plaintiffs (GTR No. 237356)	930.00
17/12/92	Def. Deposited in favour of plaintiffs (GTR No. 237400)	448.00
	TOTAL	<u>25,951.79</u>

As it can be seen the defendants had paid the sum of \$25,951.79 towards the judgement debt and costs in respect of CC171/91.

As I have indicated the amount of \$8,500.00 was paid into Court on 8 October 1992. Out of that sum, \$778.80 had been deducted and paid to the bailiff in satisfaction of his claim for poundage and costs in the execution of a judgement entered against the defendant in CC195/91. Thus only \$7,721.20 had been applied toward CC171/91.

The amount \$4,772.70 received by the defendants came out of the \$7,721.20 after deduction of \$772.12 poundage, \$30.00 storage costs, \$150.00 costs and \$1,996.38 poundage previously charged, all totalling \$2,948.50. The balance of \$4,772.70 was then paid to the plaintiffs.

The amount \$807.00 was paid to the plaintiffs out of the \$930.00 after deduction of \$93.00 poundage and \$30.00 storage charge, totalling \$123.00. The balance of \$807.00 was paid to the plaintiffs.

The amount \$253.20 received by the plaintiffs was part of the amount of \$448.00 paid by the defendants into Court. Of that amount deposited, \$44.80 was for poundage, and \$150.00 costs and storage charge, totalling \$194.00. The balance of \$253.20 was then paid to the plaintiffs.

Clearly the defendants had made payments in this case in satisfaction of the damages claimed by the plaintiffs and awarded to them by the Court in the sum of \$24,078.65 together with costs of \$180.00. The defendants failed to pay the amount adjudged and so execution was levied against the defendants. The total amount due against the defendants taking into account interest and costs of execution payable came to \$25,158.82.

The defendants had paid toward the satisfaction of the whole of the claim in CC171/91 a total of \$25,951.79 which is \$792.97 over and above the amount due under that case. I do not see why they should be made to pay anything further in this case.

If the defendants were to be made to pay a further \$5,394.37 or the alternative figure of \$2,473.33, they would end up paying \$31,346.16 or \$28,425.12 respectively, both of which would be beyond that which they were liable to pay.

The obligation imposed on the defendants was to pay the amount due under the order of the Court and this the defendants had done in this case. What the plaintiffs received depended on other factors such as costs and other deductible expenses.

I therefore refused the application with costs.

(G.J.B. Muria)
CHIEF JUSTICE