

**BETWEEN :** THE CHURCH OF JESUS CHRIST  
OF LATTER SAINTS IN TONGA  
TRUST BOARD - Plaintiff

**AND :** SIOSIUA TOKI - Defendant

**BEFORE THE HON. JUSTICE LAURENSEN**

**DECISION ON APPLICATION**  
**FOR INTERIM ORDERS**

1. Mr Niu advises he sent letter to his agent in Vava'u. This was served on Defendant at 3:00pm on Thursday 17 May 2007. Letter advised date of this hearing & availability of documents. To date nobody has contacted Mr Niu regarding this matter.
2. **HAVING HEARD** Mr Niu and **HAVING READ** the application and supporting affidavits I am satisfied that an interim order should be made in this case.
  - (a) There is a serious question to be tried. Evidence discloses that Plaintiff has a properly registered lease from the registered owner of the allotment in question. Defendant has apparently tried to establish a claim to the allotment but without success in the past.
  - (b) The balance of convenience strongly favours the Plaintiff.

- (i) There are concerns for the property arising out of the Defendant's occupation of it.
  - (ii) The Plaintiff has real concerns that the Defendant's continued occupation could prejudice its lease.
  - (iii) The Defendant has a home which he can return to.
- (c) The Plaintiff's position cannot adequately be protected by damages.
- (d) Given the Defendant's lack of any arguable legal basis for his occupation of the property his actions in refusing to vacate after he was given a temporary concession by Plaintiff cause concern. These appears to be directed to setting up some form of estoppel. It would be quite wrong in these circumstances for the Plaintiff to be given any encouragement in this regard.

I consider that this is one of those rare cases where the Court is justified in making a mandatory interim order at this interim stage.

**There will therefore be the following orders:**

1. The Defendant and his family are to vacate the premises in question within 7 days from the date of the service of this order together with copies of the statement of claim, application for interim order and supporting affidavits, unless within that period he has filed and served an application to set aside this order.
2. Costs to remain costs in the cause.

**DATED: 22 May 2007**



*[Handwritten Signature]*  
**JUDGE**