

## Pohiva v 'Akau'ola

Supreme Court  
Case No.89/1989

5 October, 1989

*Civil Procedure - Pleadings application for further particulars of statement of claim  
- principles applicable*

- 10 The plaintiff brought proceedings claiming declarations that the issue of letters of naturakusation and passports by the defendants since 1984 was unlawful, and that payments made for such documents had not been properly accounted for. The defendants applied for an order that further particulars of the statement of claim should be given before a statement of defence was filed.

### HELD

Dismissing the application.

- 20 (i) Further particulars should not be ordered where the statement of claim raises with sufficient detail the issues that are appropriate for investigation by the Court, or when the defendant knows the full facts and the plaintiff does not;
- (ii) The statement of claim did raise with sufficient detail issues which were appropriate for the court to consider, and the defendants were aware of the full facts whereas the plaintiff was not.

### Cases considered

Race Relations Board v Failing [1978] 1 All ER 497

Sharer v Wallace [1950] 2 All ER 463

30 Ross v Blakes Motors [1951] 2 All ER 689

Counsel for plaintiff : Mr Harrison  
Counsel for first and third defendants : Mr Martin  
Counsel for second defendant : Mrs Vaihu

Martin CJ

### Judgment

I ruled earlier today the Plaintiff need not provide further particulars of his statement of claim at this stage. I gave brief reasons, but was requested to give full reasons in writing. This I now do.

The facts alleged by the plaintiff can be summarised as:

- (1) that the first and third defendants have issued letters of naturalisation and Tongan passports to persons who were not entitled to them for various specified reasons;
- 40 (2) that substantial sums for money have been paid by those persons to some or all of the defendants; and
- (3) that those payments have been properly accounted for by any of the defendants.

If those facts are correct, he claims that certain consequences in the letters of naturalisation and passports, and for the money allegedly received to be properly accounted for.

Mr Martin for the first and third defendants (Hon. 'Akau'ola and the Kingdom of Tonga) seeks an order that the Plaintiff provide certain further particulars of his statement of claim before delivery of a defence. That is an order which is seldom made, and only when (a) it is necessary to enable the defendant to plead at all, or (b) it is desirable because  
50 he would otherwise be prejudiced or embarrassed, and therefore unable to plead his case adequately.

### The law

Further particulars will not be ordered before defence where pleadings raise, with sufficient detail, issues which appear proper to be investigated by a Court (Race Relations Board v London Borough of Ealing (No.2) [1978] 1 All ER 497. If an account is sought, a defendant can normally contest whether he should be required to account at all without knowing specific details of the sums alleged to have been paid to him (Sharer v Wallace [1950] 2 All ER 463). And when the defendant knows the full facts and the plaintiff does  
60 not, it is not proper to order particulars before service of a defence (Ross v Blakes Motors [1951] 2 All ER 689).

### The arguments

Mr Martin argued strongly that he faced an impossible task, to plead to such general allegations, and in the absence of anything to identify the persons to whom passports and letters of naturalisation are alleged to have been improperly issued. He points out that preparation of the defence would involve consideration of every passport issued since November 1984.

### Ruling

70 I do not underestimate the immensity of the task faced by Mr Martin to prepare his case for discovery and eventual trial. But it is neither necessary nor desirable for the plaintiff to give the particulars sought at this stage. The statement of claim raises issues which it is proper for the Court to consider. It states the alleged facts with sufficient detail to enable the defendants to plead. It is their business to know, and they must know, whether the allegations of fact are true. The reasoning in Ross v Blakes applies.

The defendants must first state whether or not they admit the allegations of fact, and is so to what extent. They may renew their application for particulars at an appropriate stage, later. It seems likely that the appropriate stage in this action would be after  
80 discovery, but I express no final view on that. And I express no view at all on the merits

of the claim.

The application for particulars before defence is refused.