

## Christine 'Uta'atu v Commodities Board (No. 2)

Supreme Court, Nuku'alofa  
 Martin, C. J.  
 Civil case No. 40/1939

19 February 1990

10 *Practice – engagement of overseas counsel – costs recoverable*

The plaintiff engaged overseas counsel to represent her in proceedings which were successfully brought against the Board. At the taxation of costs, the Board objected to her overseas counsel recovering costs at the overseas rates.

### HELD:

20 Until Tonga had a sufficient number of fully qualified counsel in private practice a private litigant was obliged to seek overseas counsel in the more complex cases. Where this was justified, costs at the overseas rates would be allowed.

Counsel for the plaintiff	:	Mr F. P. Hogan
Counsel for the defendant	:	Mr K. Whitcombe

### Ruling on Taxation

I have considered again the argument that this court should not allow successful plaintiffs who engage overseas counsel to recover their costs at overseas rates. It is an argument with which I have no sympathy at all.

30 There is a reasonable number of fully qualified and experienced counsel available to advise and represent government and quasi-governmental organisations. The situation is very different in private practice. There is a dearth of fully qualified lawyers. Until there are sufficient such lawyers available in Tonga it will be necessary in the more complex cases for a private litigant to seek advice from overseas lawyers. If he cannot do this he will be denied justice because his case will not be adequately prepared or argued.

40 Overseas lawyers have high overheads by comparison with Tonga and cannot be expected to operate on Tongan rates. Their client will have to pay overseas rates. If that client succeeds in Tonga and then fails to recover at least a substantial part of those costs any damages will be substantially reduced. He will have been denied justice because, after deduction of the irrecoverable costs, he has not been adequately compensated.

Justice means being fair to both parties, including the loser. That can be achieved by allowing overseas rates only where local counsel could not have adequately dealt with a case. If they could, the luxury of overseas counsel must

be paid for by the client; if they could not, the necessity of overseas counsel will be paid for by the loser.

Section 16(9) of the Supreme Court Act prohibits any appeal from this decision. This seems to me to be entirely wrong. I hope that time may be found in the next session of the Legislative Assembly to repeal or amend that section.