

## Fua v Sifa (and Manu v Taufa)

Supreme Court, Pangai, Ha'apai

10 Hampton CJ

C. nos. 15/94 & 33/96

14 March 1997

*Divorce - adultery - damages - jurisdiction*

*Magistrates' Courts - damages - adultery - jurisdiction*

20 In these 2 cases claims were made in the Magistrates Court at Ha'apai by wives for damages from women who had committed adultery with the respective plaintiff's husbands.

Held, observing that the ensuing judgments were null and void:

1. Claims for damages for adultery are exclusively the preserve of the Supreme Court refer to s.13 Divorce Act.
2. A Magistrate never had, and never could have, jurisdiction in such matters.
3. The judgments in the two matters were quashed and the orders set aside.

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Cases considered : Afa v Tali & Sika [1990] Tonga LR 185  
 Ualesi v Tukutoa & Ngalu [1974-80] Tonga LR 83

Statutes considered : Divorce Act (and Rules).

### Judgment

40 Whilst on annual circuit in Ha'apai it has come to my attention that the Magistrates' Court here, in the last 3 years or so, has been hearing and determining as civil actions, claims made by disaffected wives against other women who are alleged to have committed adultery with the lawfully wedded husbands of the Plaintiffs.

Two such claims have come to my attention as having already been heard and decided (in 1994 and 1996). I will detail those cases shortly.

I have learnt, as well, of a third case in which a summons has been sought from the Magistrates' Court, but a summons has not been issued yet.

50 I hereby direct that a summons shall not be issued in that case, claiming damages from the alleged adulterer. There is no jurisdiction in the Magistrates' Courts in such matters. Claims for damages for adultery are exclusively the preserve of the Supreme Court and that is clear from the provisions of the Divorce Act (Cap.29).

In particular I refer to s.13 of that Act which is the only basis for the award of such

damages.

It is clear from that section that such a claim for damages (for adultery) can only be made as part of a petition for divorce (on the grounds of adultery) and that the maximum amount of damages which may be claimed from, and awarded against, the co-respondent (the alleged adulterer) for adultery with the husband or the wife (as the case may be) is \$1000. For a discussion on the section and on the principles applicable and to be considered by the Supreme Court before any award at all is made see Webster J. in 'Afa v Tali & Sika [1990] Tonga LR 185 and Hill J. in 'Ualesi v Tukutoa and Ngalu [1874-80] Tonga L.R. 83.

I add that the "court" referred to in s.13 is the Supreme Court - see s.3(1) Divorce Act - so the Supreme Court is the only Court with jurisdiction.

The Divorce Rules 1991 also make these matters clear - see e.g. rules 4(2), 5(1), 15(2)(i), Form 1 (Petition - particularly prayer iii (damages for adultery) - & Notice to Respondent and Co-Respondent) and Form 3 (Decree Nisi - para 3 (damages for adultery)).

Having had the 1994 and 1996 cases drawn to my attention I cannot ignore them. In both case judgments in favour of the disaffected wife against the other woman have been given, in the 1994 case for \$500 damages for adultery and in the 1996 case for \$1000 damages for adultery.

In each of those cases the judgments are null and void and are, and can be, of no effect. The Magistrate never had, and never could have, jurisdiction in such matters. I am not sure what the status of the "judgments" are i.e. whether they have been paid or not, enforced or not.

There has not been sufficient time to have the 4 persons involved in the two cases brought before me. What I intend doing is to have this Judgment translated into Tongan and a copy of both the Tongan and the English versions served on each of the four persons involved in the following two Magistrates' Court civil actions:-

- (a) 15/94 Tupoutu'a Fua (of Pangai) v. Kalonikakala Sifa (of 'Uiha) - judgment 30 June 1994 for \$500 damages for adultery and costs \$29.
- (b) 33/96 Laukau Manu (of Holopeka) v. Pepetua Taufu (of Koulo) - judgment 6 August 1996 for \$1000 damages for adultery and costs \$21.

As I have said each of those judgments are, in my view, made without jurisdiction, are null and void and are unenforceable. Those judgments are therefore quashed and set aside.

Any one of the four persons involved can make representations (whether in writing or in person) to the Supreme Court, within 28 days of the service of this Judgment on them, as to anything mentioned in this Judgment or arising from the findings that the

Magistrates' judgments are null and void and of no effect.