
BETWEEN : BANK OF TONGA : Plaintiff

AND : MELINO LELEIFI : Defendant

BEFORE THE HON. CHIEF JUSTICE WARD.

COUNSEL : Miss Tapueluelu for applicant.

Chambers Hearing : 11th March, 1999.

Date of Ruling : 29th March, 1999

RULING OF WARD CJ

On 30 October 1992 the Bank was awarded judgment against the defendant in default of defence for a total of \$90,196.82 at various rates of interest. Apart from a payment of \$80.00 on 20 January 1994, the judgment sum remains outstanding and so, on 8 September 1997, the Bank filed a fresh statement of claim for the delivery of the property that had been offered as security on the original loan agreements.

On 29 September 1997 a letter was sent to the plaintiff by the Registrar, presumably on the direction of the Court, asking counsel for the plaintiff to file an affidavit and submission explaining why counsel did not consider the case to be out of time. It was listed for consideration of this point in chambers on 24 September, which was clearly intended to be a response to October.

Defence was filed on 9 October 1997 but, the day before, there was also filed an application for leave to file an amended statement of claim presumably in response to the suggestion in the letter from the Registrar.

From that point there is a lack of documents on the court file and I can only take the progress of the case from the notes on the file cover. I find that an unsatisfactory state of affairs but must make the best of it.

There is no sign of any submission being filed and an entry on the file by Lewis J on 24 October records no appearance of either party so he adjourned the case sine die.

The next entry of significance is a direction by Lewis J to list it for chambers on 24 February 1998. On 26 February there is a direction to send out notices that the case is to be listed for

judgment on 5 March. I can only assume that this was to be the ruling on the application to file an amended statement of claim but it would seem unlikely such a decision would need to be reserved for a week. However, the answer is not revealed because there is no judgment on file and the next note on the cover is that the proceedings are stayed pending the decision in C1255/96. I have been informed by counsel that this was a reference to the Kolo case although this would appear to involve a different point from that considered in Kolo's case.

Nothing then happened until 22 October 1998, when there is a note by Finnigan J giving leave, at last, to file the amended statement of claim.

The case was listed again in Vavaú during the next circuit and was marked to await proof of service. Clearly counsel for the plaintiff took the opportunity to serve her opponent on the same day and filed the certificate of service.

No defence has been filed but it appears counsel for the plaintiff was concerned whether the case was still stayed presumably under the order of Lewis J in March 1998. Nothing more happened until a letter was written to the Court on 2 February 1999 seeking a response to the application.

It was listed in chambers and it appears counsel was indeed uncertain whether the case could proceed. I consider that the stay had been removed by Finnigan J when he clearly took the initiative to try and re-start the case on 22 October 1998.

The amended statement of claim has been served and, to date, it appears no amended defence has been filed. The action is not out of time.

The case should proceed and counsel must take whatever step is considered appropriate.

DATED: 29th March, 1999



John Ward
CHIEF JUSTICE