

CIVIL JURISDICTION

NUKU'ALOFA REGISTRY

BETWEEN : FISI'HOI MANU - Plaintiff

AND : TONGA ELECTRIC POWER BOARD - Defendant

BEFORE THE HON JUSTICE FINNIGAN

Counsel: Ms Tonga for Plaintiff,
Mrs Taumoepeau for Defendant.

Dates of Hearing: 13, 14 & 17 May and 7 June, 1999

Date of Judgment: 29 June 1999

JUDGMENT OF FINNIGAN, J

THE CLAIM

The plaintiff's house burned down on 21 January 1995 and its contents were destroyed. He claims that the cause of the fire was the negligence of the defendant. He seeks T\$14,910 in special damages.

The cause of the fire that he alleges was sparks from the electric wires in his house. The negligence that he alleges is a failure by the defendant to maintain in proper order the electrical transformer from which the power was supplied to his house.

THE EVENTS

Three witnesses gave evidence for the plaintiff and four for the defendant. Where I state facts, they are the facts that are established by the evidence on the balance of probabilities or higher. There was conflict about some of the important facts among the witnesses, and there are gaps in the evidence, so not everything claimed by the witnesses in evidence was proved.

About 6 to 7 p.m. on Saturday 21 January 1995 the plaintiff and his family were packing mangoes for the market. They were at his tax allotment, about 100 meters from his

house. Suddenly they saw it burning. As they rushed toward it, their view was not entirely clear because of trees, but the plaintiff saw something sparking in the fire. He told his family to go no closer. The house by then was fully ablaze, and was soon completely burned out. The house kitchen was outside, but the house was connected to the electricity by a wire from a pole on the street. In the house the electrical equipment at the time of the fire had been a washing machine, a video and the lights. There was no electric kettle. In a shed nearby there was an electric water pump. The pump had its own line to the street.

The plaintiff went immediately to call the fire department. While he was away, the fire officers came. His son, who had witnessed the fire and had remained, led the fire officers to the pole from which the connecting line had run to the house. It appears that neither they nor the son saw any sign of a pole fuse. A pole fuse is, in essence, a wire of weaker strength placed in the service line between a pole and a house, which is intended to heat and break if the service line receives more current than is normally needed for the appliances in the house. However, soon after the fire officers left, the linesmen from the defendant arrived. One of them climbed the pole from which the connecting line ran, and called down that the fuse was burned out. He then cut the line and came down with the burnt fuse. He showed it to the defendant's driver, who gave evidence. The driver was not asked, but the plaintiff's son said the linesmen with the driver had told him they had first looked at the transformer, which they passed as they came from the main road. He said it was they who told him that the oil in the transformer was finished.

There was conflict over whether the transformer had recently been knocked from its pole(s) to the ground and lost some oil and been reinstalled. However three witnesses agreed, and I am satisfied, that the knocking down did occur. There is no direct evidence at all about whether it had lost oil and no satisfactory resolution on the evidence of the plaintiff's claim about that is possible. It is not a crucial point.

Soon after this the plaintiff needed water. He turned on the water pump but no water came.

As a result of the sparks that he had seen, and what his son told him, the plaintiff complained to the defendant that an electrical fault in the defendant's equipment had started the fire. He told the defendant also that the line was still connected to the water pump but the pump was not working when he turned it on.

As a result of that, a foreman linesman was sent on the Monday following the fire to inspect the transformer. He found the protection fuse on the low voltage side of the transformer burnt out. He climbed the pole and brought it down. He did not examine the transformer or the line. Subsequently the transformer was examined by some of the defendant's employees. A suggestion was made in evidence by the defendant's general manager that a test had been done at the pump and a low voltage had been detected there, but there was no evidence about that. After that the defendant denied liability.

THE ISSUE

The issue for trial is whether the defendant was in breach of a duty of care to the plaintiff. The questions of fact are whether the defendant allowed its transformer to operate in such a condition that it failed and allowed current to flow to the plaintiff's house at such voltage that the electricity caused the house to catch fire.

These are technical questions. To decide them, the Court must make what it can of the technical evidence presented to it and determine what emerges as fact on the balance of probabilities. Electricians may or may not agree with these findings.

The plaintiff called one expert witness, Simone Silapelu. He had not seen the damage to either the house or the electrical apparatus. His evidence was expert comment on the facts stated in the explanation that had been written by the defendant's expert witness to the plaintiff when it denied liability [Exh B]. The facts stated in the explanation were in response to written allegations made by the plaintiff to the defendant, but the court was not told what these had been. Those facts, as stated in Exh B, were these:

1. The defendant's employees found the house burned down when they arrived. One of them climbed the pole and found the power to the house was already off because the pole fuse was burnt out. He therefore cut down the wire.
2. The explanation for the fire, which the plaintiff said had been given by the linesmen, was not true, because the employees had denied giving such explanations to the plaintiff, and the plaintiff had not been there when the employees were.
3. A survey had been conducted about the transformer etc and the results were as follows:
 - a) The transformer still had oil in it and was not leaking. The problem with the transformer had been that the coil on the high voltage side was burned out, which caused weakening of the voltage to the water pump.
 - b) The power line from the transformer had not been connected directly to the house. There was a protection fuse on the high and low voltage sides [of the transformer], and the power line to the house was connected further from the transformer than these.

These stated facts and explanations are the technical parameters of the whole case.

About paragraph 1, this witness said that the burning out of the pole fuse showed there had been something wrong in the transformer or the line. It was protection of the line to the house and the house itself that was the purpose of this fuse. The fact that it had burned out showed, in the opinion of this witness, that some event threatening the line or the house had occurred. That event, he said, could only have been a sudden rush of

current, from the direction of the transformer towards the house, which overloaded the fuse and caused it to burn out.

It was the facts stated in paragraph 3 which caused the fuse to burn, he said. From what was stated there, it seemed to him that the transformer had been in poor condition. The high-voltage coil he said accepted current at 6,600 volts and lowered the voltage of the current to 250 or less for use in the nearby houses. Accepting the fact that the high-voltage coil had burned out, he said the question to answer is what caused that. The cause had to be internal as there was no indicated external damage, not even to the incoming (high-voltage) fuse. One cause he said could have been lack of oil. The oil in the transformer he said had two purposes, the first to cool the coil, the second to insulate it. If the oil drained out to any significant degree then heat would rise and insulation would fall. The heat in the wire of the high-voltage coil could then rise to the point where the high-voltage coil burned itself out. When that occurred, the wire would separate and there would have been an instant short-circuit, probably to earth or to the transformer casing. This he said would then cause an instant inrush of current to the house at high voltage (6,600 volts).

He said that the pole fuse burned out because it received current at 6,600 volts. He said that the appliances in the house likewise would simultaneously have received current at 6,600 volts, they would have burned, the wires would have melted and short-circuited, causing heat sufficient to start the fire.

About the water pump he said it was impossible for it afterwards to show any voltage reading. Once the high-voltage coil had burned out and the inrush had destroyed any appliance that might receive the current, the circuit beyond the broken coil was dead. It could no longer carry current.

A considerable part of the evidence was devoted to the defendant's claims about the water pump. It was said by the defendant to have had its own fuse, which remained intact, and it was said to have given a reading of 100 volts after the fire. However there was absolutely no evidence offered by the defendant of these claimed facts. There was no evidence given by any witness that the pump had its own fuse and, if so, what its condition was after the fire. The only evidence given was that of the plaintiff and his son. Both of them said, and I have no doubt, that after the fire they found the pump did not work, even after the electricity was restored, that it could not be repaired, and was thrown away.

Thus I take the condition of the pump to be consistent with the condition of the house: if electrical current damaged the house it also damaged the pump. The fact that it did not burn is not surprising, if it was of normal metal construction. There was no evidence about the condition of its pole fuse, and if the pump was damaged by electricity I find on the balance of probabilities that this fuse was, like the one for the house, burned out.

At the end of his evidence I had some queries about this witness's explanations. First, it is clear that both fuses between the transformer and the house burned out. I heard no

explanation from the witness of the sudden inrush which he claimed occurred, when in the process of burning those two fuses the current also reached the house and somehow generated enough heat to start a fire. Clearly the event had to occur instantaneously if he is correct. I have to accept that in describing the event as an instant inrush of current, that is what he meant. Second, I have no evidence about what actually occurs when/if there is an instant inrush of current at high voltage into a house, and how flames result from that. The heat generated in the present case, if the witness is correct, must have lasted only a very brief time. Third, it is not clear to me how the current rushed at 6,600 volts from the coil after it broke. The only explanation offered by the witness is that it came in the process of short-circuit to earth or to the transformer casing. I can accept short-circuit to earth through the house as a logical conclusion, though it may or may not match the electrical theory.

The defendant's expert witness supplied the explanations. He told the Court that voltage is always present in live wires, right up to the point of a turned-off switch. In normal usage it needed only the closing of the switch to draw current from the switch to the waiting appliance. In the case of a massive surge, at e.g. 6,600 volts, the electricity was already in the wires in the house, and it needed only the surge to force it across the open switch, which should have melted the wires, and the switch. This he said would cause short-circuits.

There was a suggestion by the defendant's expert that a fire in the house would cause the house line to short-circuit, which would cause the pole fuse to burn out after the fire had started from other causes. This suggestion however offers no explanation for the strange coincidence that the low-voltage fuse and the high-voltage coil at the transformer had burned out.

I turn now to the defendant's expert witness, also its general manager, Paula Helu. At the time of the fire, Mr Helu was the defendant's Chief Electrical Engineer. It was he who conducted the defendant's investigation into the condition of the transformer. It was he who wrote Exh B.

It must first be said that the evidence adduced by the defendant was disappointing. This witness knew nothing himself about the condition of the transformer, or about the conditions at the scene of the fire. He had seen neither. He had not interviewed the linesmen who reportedly had told the plaintiff that the transformer lacked oil. His knowledge of the transformer came he said from two employees who he said had tested it, and who are still working for the defendant. Very little of what they may have told this witness emerged in the evidence, doubtless because of a warning given by the Court that his evidence about the transformer was based on hearsay. However, neither of them gave evidence, despite a warning from the Court that the primary witnesses would have to give evidence to prove the facts upon which this witness relied for his stated opinion. All that the witness was able to say about the actual condition of the transformer was that Exh B set out his conclusions. He said this document was his report to the general manager, though it clearly is what the plaintiff said it is. It is a letter that the witness

wrote in reply to the plaintiff denying the plaintiff's claim. There is little if any of it that can be relied on as evidence.

The witness did however state as a matter of fact, and I accept, that the defendant was responsible for the supply of electricity to the plaintiff, along with the equipment necessary for that supply, up to and including the electricity meter.

The value of this witness lies in his theoretical opinion about the reasons why the high-voltage coil burned out and the behaviour of the transformer after it did. His evidence and that of the plaintiff's expert complement each other. His conclusion, he said, was that the fire was not caused by failure in the transformer or in the transmission line. Referring to paragraph 1 in Exh B, he said that the possible causes of the fire were (1) high voltage into something not designed to accept it, and (2) a very high current causing heat. The difference between voltage and current he expressed in terms of water: voltage equates to water pressure and current equates to water flow. About the blown fuses, he said a fuse is designed to burn when it receives more current than its limit, and the limit is set so that it will burn out and stop the current flowing. Current flows in one direction only, and will not flow unless a switch is on and an appliance is drawing the current from the source of supply. Therefore, a fuse will normally be burned out when an appliance for one reason or another is drawing more current than the capacity of the fuse. This could be caused by, e.g., having several appliances turned on at once, or by a short-circuit in an appliance.

About paragraph 2, he said the employees told him there was no oil leak when they opened up the transformer. He said that if there were an oil deficiency, the gap would fill with air, which is still an insulator and cannot conduct. However, he also said that a sufficiently high voltage would cause a current to leap through air from one end of a broken live conductor to another point. The effect of lowered oil he said was greater heat. On the theory of the matter he did not differ greatly from the evidence of Mr Silapelu.

About paragraph 3(a), he said that the employees tested the high-voltage coil and found it dead, that was the reason he concluded that a wire in the coil was broken. He said that if the current had consequently short-circuited to the ground, the high-voltage fuse should have burned, but it had not. He said that the high voltage could not have gone down the line to the house, because it could not be transmitted from the broken high-voltage coil to the low-voltage coil inside the transformer. However, if that had somehow occurred, he said the low-voltage coil could not accept the current at 6,600 volts, being designed for 1,000 volts maximum. He said the transformer would explode, the low-voltage fuse outside the transformer would explode, the low-voltage line would melt and everything in the house would "blow", including fuses and switches, even if the appliances were switched off. All the coils in the pump would melt, even if it were switched off.

It must immediately be apparent that, excepting the exploding of the transformer, the witness described in these words the event that the other expert witness said must have happened. The only item missing is a connection between the "blowing" and melting of

all the electrical equipment in the house and the actual fire. The only other evidential link missing is the cause for the initial burnout of the high-voltage coil.

That link may not be a necessary part of the proof if there is any evidence that a high-voltage coil burnout is an event which a normally and objectively careful electrical supply authority can not be expected to foresee and prevent.

About paragraph 3(b) this witness said that there were two fuses between the transformer and the house. These were the one on the 'exit' or low-voltage side of the transformer and the one on the pole. The defendant's other witnesses made it clear that both of these were found burned out after the fire. This witness however said in evidence that the workers had told him that the low-voltage fuse at the transformer remained intact, and his opinion proceeded on that erroneous footing. He based his conclusion on the burnout of the pole fuse only. He said that what he believed happened was that the wire inside the high-voltage coil had deteriorated and broken. The high voltage remained ready but no current was able to flow, except through the oil. The oil, although used in the transformer as an insulator, was a weak link for some current to flow. This flow occurred through the oil as conductor from the live end of the broken wire to the other end, and thus the transformer continued to work.

When a transformer is working, this witness explained, the two coils do not connect. A common core runs through them both. The high-voltage side of the core generates an electromagnetic flux, which flows around the core and is picked up by the low-voltage coil and transmitted on down the line at a lower voltage. When the wire at the high-voltage coil parted, the current jumped through the oil between the parted ends and thus continued to create an electromagnetic flux through the core of the transformer. This flux however was weak. From the low-voltage coil the weak current flowed down the line. The burnout of the pole fuse alone he explained as a result caused by a malfunction in the house, such as short-circuiting of the house wiring during the fire. It seems the whole of this theory was constructed to explain an intact fuse and weak voltage at the pump, but as I have noted, there was no evidence about that and there is a clear conclusion available from the evidence that the pump fuse was burned out like the others. In any event, the explanation leaves the mishaps to the house and pump and the mishap to the transformer as unrelated, and an astounding coincidence. I am bound to say at this point that this explanation of what the witness meant when he wrote paragraph 3(b) does not impress me.

The deterioration theory has little support in the evidence. This witness gave no evidence about the age of the transformer, but three other witnesses including the foreman linesman did. They made it plain that this transformer had been put up after it or another had been knocked down. They differed about how long it had been there, the foreman linesman could not remember, and his agreement with counsel's suggestion that it had been 2 years was as insubstantial as the suggestion itself. The only evidence is that of the plaintiff and of his son, who put the time at 2 to 3 weeks (the plaintiff) and during the previous week (his son). They differed also about whether it was new or a used one from stock. I reject the evidence of the son who said he saw it being put up, and that it was

new. I accept the evidence of the foreman linesman who was the only one of the four witnesses who might have had direct and informed knowledge. He said, and I accept, that it was not the one that had been knocked down; it was an old one which had been repaired, tested by the engineer, found to be good and put into stock. In other words, it had been tested by the defendant and had been recently installed. On balance I reject the deterioration theory.

However, the defendant's expert witness did go on to say that the high voltage of the current could cause the current itself to leap through the oil, and thus reach the low-voltage coil as electrical current. If this occurred, he said, the 'instant inrush' postulated by the other expert would have occurred and it would have destroyed the low-voltage coil, which is designed for only 1,000 volts. Simultaneously, he said, the fuse beyond that coil, the wire, the pole fuse, the meter at the house and the water pump would all "blow up". I am bound to say that this seems to be what the other expert said did happen, except that there is no evidence about the state of the low-voltage coil and of the transmission lines. It is also consistent with the facts that were observed after the fire, with the exception again that there is no direct evidence about the state of the low-voltage coil and the lines.

CONCLUSIONS OF FACT

Overall, it seems to me that the weak electromagnetic flux theory has no basis in the facts of the case, and should be ignored. I turn to the other theories. The defendant submits it has proved that the transformer fault could not possibly have caused the fire. It relies on a submission that the electricity could not have surged to the house and left its path intact. Both experts agreed on that fact. However the evidence is not conclusive about whether the path was left intact. There is evidence that parts of it were burned out and no evidence about the other parts. The plaintiff puts forward the sudden inrush theory. In my view this emerges from the opinions of both expert witnesses as the only likely explanation for the fire that was presented in the evidence. On balance, at some time before or during the fire there was a fault in the transformer. After the fire the transmission wire was found to be broken at the high-voltage coil. To the question of what caused that no factual answer was supplied. The defendant's witness theorised at the hearing that it was caused by deterioration. One would have expected him as chief engineer to have established a cause at the time of his investigation in February or March 1995. If the cause was deterioration as he suggested, then he gave no further explanation of why that might have been unforeseeable and/or outside an ordinary maintenance programme.

Clearly that fault caused, as a result, a consequential change in the supply of electricity. One suggested result is that the electricity earthed from the transformer straight to the ground. I cannot accept that, because it provides no explanation for the burning of the fuse at the exit or low-voltage side of the transformer, or for the burning of the pole fuse.

The only other explanation is that the current surged at high voltage along the transmission line toward the house. If that occurred, what evidence there is, is consistent with that. The fuses from that point on were burned. The fuse protecting the house had

burned. The pump was damaged, and probably its fuse was burned. The house had caught fire. If the electricity surged in that direction, it had to pass through the low-voltage coil and the transmission lines and should have melted or burned them, but there is no evidence about their condition. The evidence is that the defendant's employees did not examine them at the time or on the following Monday. About what the other employees found when the transformer was examined later, there is no evidence. The plaintiff for his part did nothing about having the transformer and lines examined, he merely made his allegations.

On that evidence, my finding of fact is that the malfunction of the transformer was, on the balance of probabilities, the primary and active cause of the fire, and thus a substantial cause of the destruction of the plaintiff's house.

THE SUBMISSIONS

Counsel for the plaintiff made no submissions of law.

Counsel for the defendant addressed the tort of negligence and the principles on which the plaintiff must proceed in order to succeed. I accept her submissions, which I summarise as follows. In essence, the plaintiff must establish three components. These are the existence of a duty of care to the plaintiff, a breach of that duty and resultant injury which may be compensated by an award in damages. The standard of care is reasonableness – one must avoid acts or omissions that are reasonably likely to cause injury to persons whom one ought reasonably to contemplate as persons foreseeably among those who are likely to be affected by the particular act or omission. Counsel cited *Donoghue v Stevenson* [1932] AC 562.

In respect of the burden of proof, counsel relied on *Bolton v Stone* [1951] AC 850. From the evidence the Court must be able reasonably to infer negligence and to conclude as a reasonable inference that negligence did in fact occur.

Both counsel addressed the evidence about the cause of the fire, and I have taken those submissions fully into account before reaching my conclusions of fact.

The defendant's major submission, made after the hearing for the first time, is that there was no case for the defendant to answer. Presumably for that reason, counsel for the defendant made no submissions about the damages claimed.

About the damages claimed Counsel for the plaintiff summarised the evidence, which amounts to no more than the plaintiff's assertion of what was lost in the fire and the plaintiff's self-valuations. That evidence was thoroughly probed in cross-examination. Counsel's major submission is that the plaintiff should be allowed more than the amount claimed because (1) there is an error in addition of the individual claims in the statement of claim, and (2) the plaintiff gave higher figures for some of the items while giving evidence.

DECISION

The plaintiff's claim is a statement of the facts that he observed and that his son observed when his house burned down, with an assertion in the statement of claim that it was the defendant's fault, and that what occurred 'falls under the "ipso facto" principle'. To that is added a claim that he lost goods, which he self-values at a claimed figure. The figure changed during the hearing. It is little more than assertion throughout, without reference to principle, with addition of a theoretical explanation attempting to refute the explanation that the plaintiff offered after the fire. For its part, the defendant's defence is no more than an assertion that the event claimed is not possible, made in reliance on a theoretical explanation that is based on insufficient facts. Both parties are weak on facts, strong on assertions.

However, from the evidence, conclusions of fact are possible on the balance of probabilities, and I have made those findings above. When it comes to principle, I have no difficulty, on the evidence. In the submissions on principle counsel for the defendant chose to advance a simple view, taking little account of the considerable body of law that has developed since 1932. I take this, and the silence of counsel for the plaintiff, to indicate that neither party sees the law as significantly arguable.

The defendant was in business to supply electricity to the plaintiff, up to and including the electricity meter. It had a general duty of care to the plaintiff as a consumer of its product to supply the product as far as the meter in a safe manner, so as to ensure that it caused no damage to the plaintiff that was reasonably foreseeable in the course of supplying the product. This duty extended to all aspects of its normal operations. These included the installation repair and maintenance of its supply equipment, from the source of supply to and including the meter. I am aware that the defendant had statutory obligations and rights apart from any in common law, but neither party has raised these as relevant in the case.

The evidence showed that a transformer in the transmission line developed a fault. As a result the electricity flowed from the transformer at high voltage, but did not go harmlessly to earth. It flowed through the transformer to the continuation of the transmission line, and thence to the plaintiff's house and water pump. Because the voltage was higher than the designed load of the fuse in the wiring from the transformer, the fuse in that wiring was burned out. There is no evidence about the effect of this if any on the low-voltage coil, but the theoretical evidence is that the low-voltage coil in the transformer should have been part of the transmission train and should also have been destroyed. Almost instantaneously the same high-voltage current burned out the fuse at the pole which carried current to the plaintiff's house, because the current in the line to the house was activated at high voltage. The result of that high-voltage current to the house was the heating of the electrical switches and wiring in the house to the point that they melted and short-circuited or "blew up" or exploded, and the fire in the house was generated from that. There is no fact evidence, but the theoretical evidence is that all the wires themselves that transmitted this high-voltage current must also have been damaged in some way by the powerful current.

The claim of negligence comes down in my view to foreseeability. Was it reasonably foreseeable that the wire in the high-voltage coil might fail? Was it reasonably foreseeable that if it did, the current would flow from the transformer at high voltage to the house? Was it reasonably foreseeable that current flowing at high voltage into the house would start a fire in the house?

The answer to the first question is yes. I find it was not only foreseeable that the high-voltage coil might fail, but foreseen. This is because the defendant's expert witness said that a wire direct to earth from the transformer was, or (since he had no direct knowledge) should have been, in place to deal with that. The answer to the second question is yes. The evidence of both the expert witnesses answers it. The plaintiff's expert spoke of the 'instant inrush' effect as a natural consequence of the failure of the high-voltage coil, and this on the evidence of the defendant's expert is so, if there was no direct earth wire taking the high-voltage current to earth. The facts have to speak for themselves, there is no evidence about whether there was a wire going to earth, and on the balance of probabilities the evidence placed before me shows there was not, because the current took the only other path. The answer to the third question is yes. This is clear from the evidence of both experts. Both postulated that if the current got as far as the house the effects in the house would be catastrophic.

Was the defendant in breach of its duty of care to the plaintiff in allowing these foreseeable events and consequences to occur? The answer must be yes. It cannot be otherwise if the facts are as I have found them. The key to the outflow of high-voltage current that occurred is the failure of the earthing wire from the transformer to the ground. More evidence may have led to a different conclusion. However, on the evidence before me, the failure of the high-voltage coil was foreseeable and foreseen, but the measure designed to prevent that failure from causing harm to the plaintiff, the wire direct to earth, did not operate to divert the high-voltage current away from the plaintiff's house. There was no direct evidence about this wire, but an inescapable conclusion from the evidence of the defendant's expert witness is that it should have been there and it should have taken the escaping current. There was no direct evidence of why this did not occur, and again the facts must yield their own conclusion. Why did it not occur?

There is no answer given by a witness, but the responsibility to maintain the earth wire and avoid possible injury or damage from earthing of high-voltage current in some other way must rest with the defendant alone. This is part of the general duty of care that rests on the defendant in the supply of electricity to consumers. The transmission of electricity supply occurs often in a public place, and the duty of care is not only to consumers, but also (within reason) to the public. This duty must include provision of transmission equipment that is safe and which in the event of escape diverts any dangerous current away from where it may cause foreseeable injury or damage. The duty must include maintenance of its transmission equipment and of its safety mechanisms in operative condition. On the evidence before me this did not occur in the present case, and the defendant did not maintain the earthing wire in its transmission equipment to the standard where it coped with internal failure and diverted dangerous current away from where it foreseeably might cause harm.

Therefore on the merits the claim of negligence must be decided in the plaintiff's favour. I turn to the claim for damages. This falls to be decided on the plaintiff's evidence alone.

His house he valued at T\$6,000. This was challenged as being, among other things, more than the cost price when he erected the house in 1982 with government assistance after a cyclone. His response is valid, in my view. It was his house, he owned it, and when it was burned down it was worth T\$6,000 to him. However, he then said he included in the claim the time he and his family lived in difficulty without a house. That is a claim in general damages and cannot be included in the value of the house. He has not claimed general damages. I deduct T\$1,000 for the general damages claim and fix the value of the house at T\$5,000.

He claimed T\$1,200 for 2 suitcases containing clothing. Under cross-examination he said that there had been 8 cases containing the family's clothing, and that the family lost all its clothing except what they wore. He said the actual value was much more than T\$1,200. In my view he was right to limit the amount of this claim because he is claiming as plaintiff for himself alone, he does not represent any other potential plaintiffs. He said his valuation was only an estimate, much less than the real value, and it was not thereafter challenged. I have no other evidence, and allow T\$1,200.

He claimed for a bed at T\$400 and for a tapa cloth at T\$700, but gave no evidence about these items. No damages can be awarded for them. He claimed for 10 mats (fala) at T\$200 each. This claim was challenged and he said that they were given to him as debt repayment, and were distinct from his own Tongan traditional goods. He said he knew the amount of the debts and the number of the mats. I allow this claim, at T\$2,000.

He claimed and gave evidence of losing T\$320 for 8 mats (lotaha) at T\$40 each, T\$200 for 2 fine mats (fihu) at T\$100 each, and T\$300 for 15 mats (papa) at T\$20 each. These claims were not challenged, and I allow them. The total is T\$820.

He claimed and gave evidence of losing T\$200 for cooking and eating utensils, T\$350 for a washing machine, T\$800 for a video machine, T\$120 for a chainsaw, and T\$500 for library books. Those claims were not challenged and I allow those amounts. The total is T\$1,970.

He claimed T\$100 for an encyclopedia and T\$720 for 18 copies of the Koran at T\$40 each. These claims were challenged briefly, and explained. No basis was established for varying the valuations or for disallowing the claims. I allow the claims. The total is T\$820.

He claimed T\$1,000 for 4 briefcases containing records and reports. At the hearing he increased his estimate of value to T\$2,000. He was challenged as to the valuation. He said the records were hundreds of addresses of organisations of Islam in different parts of the world, which he had contacted whenever he had any difficulty. He said that the loss of these addresses is the reason that he lives in poverty now. Challenged further on the

valuation at T\$2,000 he said they were all the records and reports which he held as president of his Islamic organisation, which he looked after until the next president takes over. He said the amount is much less than the value of the goods themselves, but to make peace he was prepared to accept a lower valuation. However no lower value was put to him for his acceptance and the only evidence is his claim of T\$2,000. During submissions counsel sought leave to amend the statement of claim to match the evidence, and leave is granted. I allow this claim at T\$2,000.

Finally, he claimed T\$3,500 for lost cash. On this claim he was thoroughly cross-examined, and his answers gave me no confidence at all about this claim. He gave various sources for the money, including deposits from outside Tonga into bank accounts, which he could not identify, and the sale of poles and posts from the trees on his allotment. At one point he stated that the whole sum had come from the sale of poles and posts. Questioned about the amount, he said he knew it had been exactly T\$3,500 because he counted it every night before going to sleep. The amount had varied in recent days with shopping and loans to relatives. On the Saturday, the day of the fire, he had taken out a small amount to purchase items for his family. He said he counted it and found that the interest had been T\$80, which he took out and put in his pocket, leaving exactly T\$3,500. The explanation about interest conveyed nothing significant to me, and did nothing to increase my confidence in this part of the claim. The evidence in my view does not establish the claim and I cannot allow any damages under this head.

The total amount of the claims that I have found established is T\$13,810. Judgment is entered for the plaintiff in the sum of T\$13,810 together with costs which are to be agreed or taxed.

NUKU'ALOFA, 29 June 1999



[Handwritten Signature]
JUDGE