

HELD AT APIA

C.P. 248/93

BETWEEN: UETA FAASILI of Motootua,
Public Servant

Plaintiff

A N D: THE ATTORNEY GENERAL sued on
behalf of the Public Service
Commission "the Commission"

First Defendant

A N D: SIFUIVA SIONE, Member of
Parliament and Chairman of
the Public Accounts Committee
of the Legislative Assembly
of Western Samoa

Second Defendant

A N D: FONOIVASA LOLESIO AH CHING
Secretary of the Public Service
Commission

Third Defendant

A N D: TUISUGALETAUA SOFARA AVEAU
Director of the Department of
Agriculture, Forest and
Fisheries

Fourth Defendant

Counsel: Mr R.S. Toailoa for Plaintiff
Ms H. Aikman for First & Second Defendants
Mr E. Puni for Third Defendant
Mr L.S. Kamu for Fourth Defendant

Date of Hearing: 21 October 1993

Date of Ruling: 25 October 1993

RULING OF SAPOLU, CJ

In its original form, these are proceedings under Rule 93 of the Supreme Court (Civil Procedure Rules) 1980 to debar all defendants from defending proceedings instituted by the plaintiff against them for non-

compliance with orders for discovery of documents issued on 31 August 1993. The plaintiff is also claiming costs.

The first defendant is the Attorney-General sued on behalf of the Public Service Commission and the plaintiff has abandoned its motion to debar the first defendant from defending the proceedings instituted by the plaintiff and has filed a fresh application dated the 28th of September 1993 for an order for discovery of documents against the first defendant. Counsel for the first defendant has consented to an order for discovery against the first defendant. Accordingly leave is granted to issue an order for discovery of documents against the first defendant pursuant to the plaintiff's application of 28 September 1993 for discovery of documents. The first defendant is allowed ten(10) days to comply with that order for discovery. The affidavit in reply to this order is to be made and signed by the Secretary of the Public Service Commission who is the third defendant in these proceedings. Any question of privilege which may arise will be determined by the Court at an appropriate time.

As for the second defendant, he excuses his non-compliance with the plaintiff's order for discovery of documents by challenging the propriety and validity of the proceedings instituted by the plaintiff against him. The second defendant is the Chairman of Parliament's Public Accounts Committee and he says that he is protected by Section 3 of the Legislative Assembly Powers and Privileges Ordinance 1960. Counsel for the second defendant says that the statement of claim and the amended statement of claim lack sufficient particularity and clarity as to the circumstances in which the action against the second defendant is based. She therefore asked for further particulars in the statement of claim. I will allow the second defendant ten(10) days to file an appropriate application setting out the specific particulars that he wants to be further added to the statement of claim.

As for the third defendant, he has complied with the order for discovery of documents but outside of the time period of ten(10) days prescribed in the order for discovery. Counsel for the third defendant explained to the Court the reasons for the delay but there was no application made by the third defendant seeking an extension of time when he was confronted with the difficulties that made it impossible for him to comply with the order for discovery within the prescribed time. The third defendant has also applied for extension of time to formally file the affidavit of documents he has already lodged with the Court registry.

In the circumstances of this case, I will grant the third defendant extension of time to 3.00pm today to formally file his affidavit of documents. But as the plaintiff has undoubtedly incurred costs for the present proceedings to debar the third defendant from defending the plaintiff's action, costs of \$50 is awarded to the plaintiff against the third defendant. Those costs shall be paid to the plaintiff within ten(10) days from today, in default the third defendant will be debarred from defending the plaintiff's action.

As for the fourth defendant, his counsel has explained the reasons for the fourth defendant's failure to comply with the order for discovery. He ascribes this failure to the defendant having to attend to the work carried out by the Agriculture Department at Savaii to eradicate the present diseases affecting taro and then having to travel overseas on an official Government trip. The fourth defendant is the Director of Agriculture, Forests and Fisheries. He returned to the country on 4 September 1993 and up to now he has not complied with the order for discovery.

There was also no application made by the second defendant for extension of time to comply with the order for discovery within the time prescribed in the order when he found that it was impossible for him to comply within the time prescribed in the order for discovery. There is now an application

by the fourth defendant for extension of time to comply with the order for discovery.

In the circumstances of this case, I will allow the fourth defendant ten(10) days to comply with the plaintiff's order for discovery and to file an affidavit of documents. As the plaintiff has undoubtedly incurred costs in bringing these proceedings to debar the fourth defendant from defending the plaintiff's action, costs of \$100 are awarded to the plaintiff against the fourth defendant. Those costs shall be paid within ten(10) days from today. If the fourth defendant fails to comply with the order for discovery and file an affidavit of documents within ten(10) days or pay the costs awarded against him within ten(10) days, then he will be debarred from defending the plaintiff's action against him.

Any questions of privilege which may arise will be determined by the Court at an appropriate time.

These proceedings are adjourned for remention on 8 November 1993.

T. F. M. Sanyal
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CHIEF JUSTICE