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IN THE COURT OF APPEAL OF TONGA
NUKU'ALOFA REGISTRY

AC 10 of 2020
(LA 21 of 2018)

BETWEEN:

[1] SIONE MA'AKE KAUFUSI

[2] SITIVENI KAUFUSI

Appellants/Applicants

-and-

[1] LORD MA'AFU TUKUI'AULAHI

[2] MINISTER OF LANDS

Respondents

Appellants' application for leave to re-examine s 82(e) of the *Land Act*

RULING

BEFORE: Whitten P
Appearances: Mr D. Corbett for the Applicants
Mr S. Taione for the First Respondent
Ms L. Macomber for the Second Respondent
Hearing: 10 June 2021
Submissions: 18 and 28 June 2021
Ruling: 8 July 2021

The application

1. On 30 March 2021, this Court dismissed the appeal in this proceeding concerning the interpretation of s 82(e) of the *Land Act*.[1]

2. The applicants now apply for leave to have a single judge of this Court revisit and re-examine the Court's decision on s 82(e) of the *Land Act* and s 82, as a whole.

Background

3. On 20 October 2020, in proceeding LA 21 of 2018, Niu J held:[2]

> "[39] Mr. Piukala however argues that the grandsons of the brother of the deceased holder, such as the plaintiffs in the present case, are heirs under S.82 (e). I do not agree. Section 82 (e) does not provide that grandsons of a brother of the deceased holder can succeed as heir to the deceased holder's allotment. It only provides for the brother and the eldest male heir of his body to succeed to the deceased holder's allotment. The words of the provision are clear: 'If the deceased holder's eldest brother be dead without leaving any male heir of his body then the next eldest brother shall succeed or if he be dead the eldest male heir of his body and so on ...' It provides only for the brother and his son, not his grandson.

[1] *Kaufusi v Tukui'aulahi* [2021] TOCA 6
[2] *Kaufusi v Tukui'aulahi* [2020] TOLC 10

08 JUL 2021

> [40] I consider that that provision, that only the sons, and not the grandsons, of the brother, is to succeed as heir was deliberate. That is because S.82 (c) expressly provides for the sons and the grandsons of the deceased male holder to succeed as heir instead. And s.84 expressly allows the sons and grandsons of a deceased male holder to elect to succeed to the deceased holder's allotments or to retain their own allotments, and to prohibit any other person from making such election. This Court has held that that is so in the case of *Fifita v Minister of Lands and Huahulu* [1981-1988] Tonga LR 65. In that case, there were no children of the deceased holder but he had an older brother who had a son who had several sons. By the time the widow in that case died, the brother and his son had died. The Minister sub-divided the deceased holder's tax allotment into town allotments. The grandsons of the brother claimed that they were the heirs to the tax allotment. The Court dismissed their claim. It held that the paragraph (e) limited the heirs to only the sons of the brothers.
>
> [41] I therefore find and I hold that the plaintiffs, who are grandsons, and not sons, of Filipe, the next eldest brother of Vili Heti, are not lawful heirs to the tax allotment of Vili Heti. That is sufficient to dispose of the claim of the plaintiffs, but I will also deal with their other grounds of claim."

4. On 20 November 2020, the plaintiffs below (the appellants / applicants here) appealed that decision. In essence, they, by the hand of their lay advocate, Mr Paula Piveni Piukala, whom Niu J granted leave to appear below, contended that on its proper interpretation, s 82(e) of the *Land Act*, did not limit succession only to the brother of the landholder and his son but extended to the "whole line of male heirs of the deceased holder".

5. The Court of Appeal rejected that interpretation as being:[3]

> "[6] ... at odds with both the general scheme of the section as well as the language used. The general scheme is one in which lines of succession are identified but with cut-off points referable to generational status. It has been described as "the ladder of succession" see *Kilifi v Heimuli and the Minister of Lands* [1996] Tonga LR 31 at 33. Subsections 82(c) and (d) plainly limit succession rights to three or two generations. That the section is intended to operate this way, is quite obvious having regard to the provisions of s 82(g) which provides for reversion to the Crown in the event that there is no two generational succession. It would create an anomaly to construe s 82(e) as having any wider operation than two generations unless the language of the subsection dictated such a conclusion. To the contrary, it does not. In that subsection, and elsewhere, the formulation ' .... the male heir of his body ...' or '... the male heir of the body of [named male relative] ...' serves to identify, with precision and particularity, the nature of the relationship between the ordinarily deceased male relative and his male offspring. That is to say, it concerns the heir of **his** body and not the body of his male offspring in subsequent generations."

6. The Court added that:

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[3] *Kaufusi v Tukui'aulahi* [2021] TOCA 6

> "[7] While this precise point about the construction of s 82(e) has not been addressed by a Court in the Kingdom (as far as we are aware), it is consistent with the construction of s 82 and other provisions of the Land Act, adopted in earlier proceedings on slightly different issues: see, for example, *Fifita v Minister of Lands* [1981-1998] Tonga LR 65."

7. During the course of the hearing of the appeal, on 22 March 2021, the appellants, again through Mr Piukala,[4] contended by reference to asserted expert translation, that the Tongan language version of s 82(e) was different to the English language version, in that the Tongan version of the English words 'and so on taking the deceased holder's brothers in succession in order of their ages', namely, '*mo honau ngaahi 'ea tangata*', in fact meant 'and their male heirs succeed'. Mr Sisifa, for the Second Respondent, opined that there was no difference in meaning. Directions were made for further evidence and submissions to be filed on the translation issue. On 24 March 2021, Mr Piukala, on behalf of the appellants, filed a 14 page submission on the issue, and beyond. His supplementary submission incorporated what was said to be a translation of the relevant passage by an asserted expert by the name of Tulima Finau.

8. In its reasons for decision, after considering the further submissions, the Court of Appeal addressed the interpretation issue as follows:

> "[10] *Even assuming, for the moment, that the appellants are correct in identifying that difference and the Tongan version prevails, it would be curious indeed to treat the subsection as creating an open ended generational succession for brothers* other than the first and second brother of the estate holder while the latter brothers and their progeny are restricted to succession for one further generation only. This is not the intended effect of the subsection. *Section 82(e) cannot be considered in isolation and both the English and the Tongan versions must be construed in the context of the whole of s 82.*"

[italicised emphasis added]

9. In the result, Niu J's interpretation of s 82(e) was upheld and the appeal was dismissed with costs.

10. Undeterred, on 28 May 2021, the appellants, by their putative counsel, Mr Corbett, filed an application stated to be pursuant to Order 7 rule 2 of the *Court of Appeal Rules* (dealing with other applications) to a single judge of this Court for leave to:

> "... examine the true meaning of the Tongan wording of section 82(b) of the Land Act and also section 82 as a whole to determine whether the written Tongan wording is in fact consistent with the English wording of the Act."

Grounds of the application

11. In their identical affidavits in support, the appellants deposed, in summary, that:

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[4] With leave of the court to appear, not as counsel, but only to answer questions arising from their submissions.

(a) they understood that the appeal had been decided and that any further re-examination of the appeal would face the issue of res judicata;

(b) the Tongan wording of s 82(e) of the Act was not rebutted by expert evidence from either respondent;

(c) s 21(b) of the *Interpretation Act* gave primacy to the Tongan version of the words in question;

(d) an analogy could be drawn between the wording of the oath for a sublease, with emphasis on the words "... *Mo hono ngaahi hako* ..." which was said to mean "the lessee and his descendants";

(e) during the appeal, the second respondent could not locate the 1949 amendment which created s 82(e) or any explanatory memorandum for the 'Act of 1903';

(f) a full examination of the Tongan wording of the Act is necessary to "provide clarity" and to "avoid any future inconsistency or threat of contradiction with the Constitution in relation to the concept of hereditary succession";

(g) the italicised words in paragraph 10 of the Court's decision above were "alarming when the goalpost seemed to move from section 82(e) to [the] whole of section 82"; and

(h) the issue is a matter of public importance.

12. Given the novel nature of the application, on 10 June 2021, it was called for mention before me. After hearing from counsel, the directions made that day recorded, among other things:

> "D. The matter was called for mention today because it was not apparent from the documents filed what jurisdiction the Court has to entertain the application ("**the jurisdictional issue**").
>
> E. After raising that issue, Mr Corbett (beside whom at the Bar table, sat Mr Piukala, unannounced, who appeared at the hearing of the appeal upon limited leave being granted) sought time to consider the matter further and to file submissions.
>
> F. Counsel for the respondents opposed the application on the basis that the decision is res judicata, this Court is relevantly the final Court of Appeal, Order 7 rule 2 of the Court of Appeal Rules only applies to appeals which are on foot and the Court does not have jurisdiction to effectively revisit its own decision."

13. Directions were made for the filing of written submissions on the jurisdictional issue and, thereafter, for any party to indicate whether they required a further oral hearing. No party required an oral hearing and thus this Ruling has been arrived at 'on the papers'.

Applicants' submissions

14. By their written submissions, dated 18 June 2021, the applicants contend, in summary, that:

    (a) clause 92 of the Constitution confers exclusive power and jurisdiction to hear and determine all appeals;

    (b) clause 14 of the Constitution states that a trial is to be fair and that a person's property cannot be taken away except according to law;

    (c) the dispute during the hearing of the appeal, between the second respondent and the appellants, as to the Tongan translation, in which Mr Sisifa SG, for the second respondent, ultimately submitted that there was no significant difference in meaning, meant that it was unfair for the Court of Appeal to make its final judgment;

    (d) to the above italicised passages of paragraph 10 of the Court's decision, the applicants ask: "*if this is so, why is there need for the Interpretation Act where the Tongan words give the true meaning of the law*";

    (e) by reference to the decision in *Dexing Construction Co Ltd v Fua* [2019] TOCA 12 in which this Court allowed an application by the appellants there to rely upon fresh evidence and, to avoid any res judicata estoppel, adjourned the appeal part heard to enable them to pursue their claim with that evidence before the Land Court, the Court here could have referred the issue of interpretation to the Land Court for a full examination of the meaning of the Act with the use of expert witnesses;

    (f) by making its final decision in the present case, the Court of Appeal has "closed down all avenues for the applicants to examine the meaning of section 82(e) and section 82 of the *Land Act* making any future attempts to explore the issue res judicata"; and

    (g) the Constitution is supreme law and states that a trial must be fair, and if not, the Constitution gives the Court jurisdiction to set aside the res judicata issue and provide a fair trial to the applicants.

Respondents' submissions

15. The submissions filed on behalf of the respondents largely coincided and may be summarised as follows:

    (a) none of the *Constitution*, the *Court of Appeal Act*, the *Court of Appeal Rules* or any other law of the Kingdom of Tonga provides for a single judge of the Court of Appeal to hear or determine the present application;

    (b) by reason of this Court's decision, the application is barred by res judicata estoppel;

    (c) the applicants have wrongly interpreted clauses 14 and 92 of the Constitution (referring to *Taione v Kingdom of Tonga* [2005] Tonga LR 67);

(d) clause 92 of the Constitution does not provide jurisdiction to a single judge of the Court of Appeal to rehear and redetermine an appeal that has been determined;

(e) clause 14 of the Constitution does not provide any jurisdiction for a single judge of the Court of Appeal to revisit a decision of three judges of the Court;

(f) the Court does not have jurisdiction to effectively revisit its own decision on an issue which the appellants are now attempting to relitigate;

(g) that attempt is prevented by the doctrine of res judicata and by virtue of s 99 of the *Evidence Act* (referring to *Fakafanua v Faua Development Ltd* [2015] TOCA 11); and

(h) the applicants' reliance upon the decision in *Dexing Construction* is misplaced since it was concerned with an application to introduce new evidence which is not the instant application.

Consideration

16. Clause 14 of the Constitution provides:

> **14 Trial to be fair**
>
> No one shall be intimidated into giving evidence against himself nor shall the life or property or liberty of anyone be taken away except according to law.

17. Clause 14 does not provide a jurisdictional basis for the present application. Even assuming that the heading to the clause may be considered in interpreting the operative provision, the clause does not, on any interpretation, provide to the effect that the appellants are permitted to make an application of the present kind; that this Court has jurisdiction to entertain the application; that even if it did, the Court should entertain the application; or, that if the application is not entertained, the appellants will somehow have been denied a fair hearing.

18. Further, there was no complaint by the appellants about any unfairness in the trial before the Land Court. And, there was no complaint during the hearing of the appeal before this Court of any unfairness. On the contrary, the appellants (and the other parties) were given full opportunity to make further submissions on the translation issue, which they did, and which were considered and decided by the Court. The arguments rehearsed, impermissibly, in the form of the applicants' affidavits in support of this application, are but a summary of the same more detailed arguments advanced by Mr Piukala in his supplementary submissions during the hearing of the appeal.

19. The present belated attempt to disguise this application as a complaint that if it is not granted, the appellants will be denied a fair hearing, proceeds from an erroneous premise borne of failing to properly read or appreciate paragraph 10 of this Court's decision. The applicants refer to the 'issue' during the hearing of the appeal between them and the second respondent as to the meaning of the Tongan version of the relevant words in s 82(e). However, the opening words of

paragraph 10 of the decision – *"Even assuming, for the moment, that the appellants are correct in identifying that difference and the Tongan version prevails,..."* - make plain that the Court proceeded to interpret s 82(e) on the basis of the appellants' translation. But, as explained in the balance of that paragraph, that was not the end of the matter and other interpretative considerations were applied in arriving at the conclusion stated.

20. The applicants' submission summarised at paragraph 14(g) above distorts, and is not drawn from any actual provision of, the Constitution.

21. The jurisdiction of the Court of Appeal is provided by clause 92 of the Constitution:

> **92 Jurisdiction of Court of Appeal**
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> The Court of Appeal shall have exclusive power and jurisdiction to hear and determine all appeals which by virtue of this Constitution or of any Act of the Legislative Assembly lie from the Supreme Court or Land Court (excepting matters relating to the determination of hereditary estates and titles) or any judge thereof and shall have such further or other jurisdiction as may be conferred upon it by any such Act.

22. Neither clause 92 nor any other provision of the Constitution "gives the Court jurisdiction to set aside the res judicata issue". Nor, for that matter, does the *Court of Appeal Act*, its Rules, the *Evidence Act* or any other enactment of the Kingdom.

23. The applicants' rhetorical question in response to the first sentence in paragraph 10 of the decision - "*if this is so, why is there need for the Interpretation Act where the Tongan words give the true meaning of the law*" - is but an attempt to reargue the issue decided. It too proceeds from a wrong premise. It is therefore not appropriate to engage with it in this Ruling for the point has been decided and the grounds for and submissions in support of the application take the issue no further. To the extent any response is warranted, it may be found in paragraph 19 above.

24. As the respondents correctly identify, the applicants' reliance on the course taken in *Dexing Construction Co Ltd v Fua* [2019] TOCA 12 (in which Mr Corbett also appeared for the appellant) is misplaced. Dexing was successful in the Magistrate's Court in resisting a claim by Fua for arrears of rent totalling $3,000. The Magistrate found there was an understanding between the parties that the rent was to be only $500 per annum. However, on appeal to the Supreme Court, Niu J allowed Fua's appeal from the Magistrate's decision. He ruled that evidence of a verbal agreement to contradict or vary the terms of the registered sublease was not admissible by virtue of s 79 of the *Evidence Act.* Dexing then appealed that decision and sought leave to adduce further evidence in the form of a copy of the application to register the disputed sublease it had obtained from the Ministry of Lands since the hearing in the Supreme Court and which showed a rent of $500 per annum. As the application was in writing, signed by both parties, it overcame any difficulty arising from s 79 of the *Evidence Act.* On that application, this Court found as follows:

> "[4] Order 8, Rule 1 (3) of the Court of Appeal Rules provides that, except in respect of matters arising since trial, further evidence on questions of fact may not be received without leave and then, only on special grounds. The usual principles upon which further evidence may be admitted are well established: *Ladd v Marshall* [1954] 1 WLR 1489; *Cocker v Cocker* (2002) TLR 1. The Court will consider whether the evidence is fresh in the sense that it could not with reasonable diligence have been discovered prior to trial; whether the evidence is cogent; and whether it is credible. These principles are guidelines, the ultimate question being whether there are special grounds in the overall interests of justice to admit it : *Rainbow Trading Co Ltd v Lin Maolin* [2007] TLR 120, 125.
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> [underscored emphasis added]

25. There, the Court was satisfied that special grounds existed and that it was proper to admit the evidence because even though it was not, strictly speaking, fresh evidence, it was directly relevant to the issue to be determined, had a high level of cogency and could not be controverted. The Court also took into account that the correct rental under the sub-lease was an issue with long term consequences for the parties.[5] On that basis, the appeal was adjourned part heard to enable *Dexing* to pursue a claim in the Land Court for rectification of the registered sub-lease.

26. The instant application bears virtually no resemblance to the application in *Dexing*. That application sought to introduce fresh evidence following trial as part of the appeal process. The instant application seeks to relitigate an issue which was presented and has been decided on appeal and after the applicants were afforded an opportunity to place before the Court further material on the issue they now want the Court to revisit. *Dexing* is therefore distinguishable and does not assist the applicants here. The Court's departure in *Dexing* from the usual rules governing applications to adduce fresh evidence signified the peculiar circumstances of that case. The decision therefore cannot be used as a precedential means for allowing backdoor attempts at relitigating appeals before this Court after judgment has been perfected and entered.

27. Even if the principles on fresh evidence applications were apposite to the instant (which they are not), the translation issue sought to be reopened was discoverable with reasonable diligence before the hearing of the appeal, was raised and ventilated during the hearing of the appeal, the applicants version was accepted by the Court, but their contended for interpretation of s 82(e), even on the Tongan translation of the relevant words, was not. Therefore, there was no need to send the matter of statutory interpretation back to the Land Court. In circumstances where the applicants were afforded a full opportunity to present their case on appeal, their dissatisfaction with the outcome does not constitute special grounds, which, in the overall interests of justice, could permit further hearing and adjudication of the interpretation issue.

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[5] [5]

28. Of course, the applicants' last submission tends to deflect rather than engage with the critical issue on this application, namely, whether there is any jurisdiction and/or power for a single judge of this Court to revisit a decision of the full bench of this Court. For the reasons stated thus far, and on the facts of this application, there is not.

29. Save for appeals relating to the determination of hereditary estates and titles, the Court of Appeal is the final appellate court in Tonga. Decisions of this Court attract the doctrine of res judicata. The applicants acknowledged the doctrine as the basis for their complaint that by making its final decision in the present case, the Court of Appeal has "closed down all avenues for the applicants to examine the meaning of s 82(e) and s 82 of the *Land Act* making any future attempts to explore the issue res judicata". In that regard, they are only partly correct.

30. From the leading text 'Res Judicata' by Spencer Bower and Handley:[6]

    (a) Res judicata gives effect to the policy of the law that parties to a judicial decision should not afterwards be allowed to relitigate the same question, even though the decision may be wrong in law or fact.[7] The doctrine comes into its own only when the decision is wrong; if it is right, it merely serves to save time and costs.[8]

    (b) However, there is an essential difference between res judicata estoppel and judicial precedent. The former continues to bind the parties to the decision even if a later decision on the issue shows that the earlier was wrong.[9] The latter decides a question of law which is binding upon all persons, parties or not, in all courts of inferior, but not in courts of higher, jurisdiction.[10]

    (c) An appellate court may allow its final orders, prior to them being entered, to be reopened where the Court has apparently proceeded according to some misapprehension of the facts or relevant law which is not attributable solely to the neglect of the party seeking the rehearing. However, the purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to reargue their cases: *Autodesk Inc v Dyason (No 2)* (1993) 176 CLR 300, 303.[11]

    (d) A number of final courts of appeal in common law jurisdictions have held that they have inherent jurisdiction to recall their orders, even after entry, to avoid irremediable injustice or to correct any injustice caused by an earlier decision, but only in circumstances which have been described as 'special', 'truly exceptional' or 'rare and unusual', such as where a party, through no fault of its own, has been subjected to an unfair procedure, where there was

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[6] 5th edition, by the Hon. KR Handley, a retired member and former Vice President of the Tongan Court of Appeal, LexisNexis, 2019.
[7] *Crown Estate Comrs v Dorset County Council* [1990] Ch 297, 305.
[8] *Royal Bank of Scotland NV v TT International Ltd* [2015] 5 SLR at 1104, 1130 per Menon CJ
[9] *Watt* [2008] 1 AC 696, 708.
[10] *Re Waring* [1948] Ch 221, 223, 227.
[11] See also *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119.

no alternative effective remedy, when fresh evidence has been discovered which could not by reasonable diligence have been adduced in those proceedings, or a party failed to disclose important material, or where the decision may affect future or prospective rights.[12] The Supreme Court of Canada has held that the exception can apply where it would be unjust to enforce the estoppel.[13] No other court has given the exception such a wide operation. There have been very few cases where special circumstances have been established. The exception should be kept within narrow limits to avoid undermining the general rule of finality and provoking increased litigation and uncertainty.

(e) An issue estoppel stands if there is no newly discovered fact, if the party has only just realised it is important, where it was discoverable with reasonable diligence, or the new fact is not sufficiently material. The discovery of fresh evidence, per se, is not sufficient. The remedy for that is an application for a new trial with an extension of time if that is necessary: *Edgerton v Edgerton* [2012] 1 WLR 2655 [41].

31. In applying those principles to the instant application, no special circumstances have been demonstrated which could enliven this Court's inherent jurisdiction to consider reopening its decision on the interpretation of s 82(e) of the *Land Act* or to permit the applicants here to effectively relitigate that question. As a matter of legal precedent, the decision binds the Land Court and any party appearing before that court on the issue, unless and until this Court considers it appropriate to revisit the issue and decide it differently. As such, the figurative door remains open to other parties in future cases to invite this Court, on proper cause, to revisit its decision in this case. However, given this decision is yet another instalment in a consistent line of authority on the interpretation of s 82 since at least the 1984 decision of *Fifita v Minister of Lands and Huahulu*, ibid, the task of persuading this Court to revisit the issue or to adopt a different interpretation can only be described as formidable. Such is the importance of the general rule in favour of finality in litigation and certainty in the law. Alternatively, it is always open to Parliament to achieve a different succession regime through legislative amendment.

Result

32. For those reasons, the application is incompetent, misconceived and must be dismissed.

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[12] UK Supreme Court: *R v (Bancoult) v Secretary of State (No 4)* [2017] 1 All ER 403. Privy Council: *Maharajah Pertab Narain Singh v Maharanee Subhao Koer, ex p Trilokinath* (1878) LR 5 Ind App 171, 173; *Arnold v National Westminster Bank plc* [1991] 2 AC 93; *Royal Bank of Scotland NV v TT International Ltd*, ibid, at 1150-1151, 1160, 1174-1175 and the cases cited in *State Rail Authority v Codelfa Construction Pty Ltd* (1982) 150 CLR 29, 38-39, 45-46. As at the time of *DJL v Central Authority* (2000) 201 CLR 226, 247, there had been no decision of the High Court of Australia dealing with the position after entry of its final orders. New Zealand: *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2010] 1 NZLR 35. Ireland: *Bula Ltd v Tara Mines Ltd (No 6)* [2000] 4 IR 412.
[13] *Danyluk* [2001] 2 SCR 460, 492-493, 498-499.

33. On the question of costs, if any, during the hearing, it was indicated to Mr Piukala that if the applicants wished to maintain their application, as authored by him, and if it was ultimately determined that the application was misconceived, the Court would entertain any application for costs against Mr Piukala personally. In that regard, the parties are referred to s 11 of the *Court of Appeal Act* and the following passage from the decision in *Latu v Magistrates Court of Tonga* [2020] TOSC 81:

> "[43] By comparison, s.15 of the *Supreme Court Act* provides, relevantly, that 'the costs of every proceeding in the Court shall be in the discretion of the Court as regards the person by whom they shall be paid'. As discussed recently in *Jurangpathy v Tonga Communications Corporation* [2020] TOSC 2, even that apparent limitation to the discretion is to be interpreted broadly and consistent with the Supreme Court's inherent jurisdiction.[14] Further, and in the context of whether a court has jurisdiction to order costs against a non-party, it has been held that the phrase 'determine by whom ... costs are to be paid' is not to be read as if it were 'determine *the party* by whom ... costs are to be paid': *Oshlack v Richmond River Council* (1998) 193 CLR 83 at [38].[15]"

34. As such, I direct that any application for costs of this application, including any order requiring the applicants and/or Mr Piukala to be liable for same, jointly and severally, is to be filed within 14 days of the date of issue of this Ruling. In the absence of any such application, there will be no order as to costs.

NUKU'ALOFA
8 July 2021

SUPREME COURT TONGA

M. H. Whitten QC LCJ
PRESIDENT

[14] *Uata v Kingdom of Tonga* [2006] Tonga LR 205.
[15] Referring to *Knight v FP Special Assets Ltd* (1992) 174 CLR 178, per Gaudron J at [2] and *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965.