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06/04/23

IN THE COURT OF APPEAL OF TONGA  
CIVIL JURISDICTION  
NUKU'ALOFA REGISTRY

AC 7 of 2022  
(LA 4 of 2021)

BETWEEN:

**TONGA ASSETS MANAGERS ASSOCIATES LIMITED**

Appellant

-and-

[1] TOMIFA PAEA

[2] MINISTER OF LANDS

Respondents

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First Respondent's application to strike out the appeal for want of prosecution

## RULING

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Coram: Whitten P  
Harrison J  
Morrison J

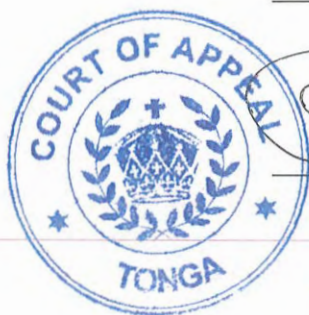
Appearances: No appearance for or by the Appellant  
Mr D. Garrett SC for the First Respondent  
Mr S. Sisifa SG for the Second Respondent ✓

Date of hearing: 29 March 2023  
Date of ruling: 29 March 2023

1. By application filed on 14 March 2023, the First Respondent seeks an order striking out this appeal for want of prosecution.
2. The Second Respondent maintains the same neutral stance on the application as he has on the substantive appeal.
3. The judgment of the Land Court appealed from was issued on 30 March 2022.
4. The Notice of Appeal was filed on 12 May 2022 by Mr S. Tu'utafaiva as counsel for the Appellant. To date, no notice of change of counsel or counsel ceasing to act has been filed. We therefore proceed on the basis that Mr Tu'utafaiva remains counsel on the record for the Appellant.
5. On 31 August 2022, the hearing of the appeal was deferred by consent from the second session of 2022 to the current session.
6. On 10 January 2023, directions were issued which, relevantly, required the

Appellant to file its submissions on the appeal by 10 February 2023.

7. The Appellant has not filed any submissions on the appeal by the date directed, or at all. Further, Mr S. Tu'utafaiva has not contacted counsel for the other parties or the Registry to explain the default or to seek any extension of time within which to file submissions.
8. During the call over on 17 March 2023, Mr Garrett confirmed that he had served the present application on Mr Tu'utafaiva by placement of the papers in his pigeonhole at the Registry, and which had since been collected. He also advised that he had attempted to contact Mr Tu'utafaiva by telephone, without success, and that Mr Tu'utafaiva has not responded to his emails.
9. We are also informed by the Registrar that enquiries of the office of Tonga Asset Management Associates Limited returned information to the effect that they were not aware of the non-compliance with directions and that otherwise Mr Tu'utafaiva remained the Appellant's counsel on this appeal.
10. In those circumstances, and in exercise of the Court's inherent jurisdiction, we are satisfied that the appropriate course is to order that the appeal be struck out for want of prosecution without adjudication on the merits.
11. The Appellant is to pay the First Respondent's costs of the application and the appeal to be taxed in default of agreement.



Whitten P

Harrison J

Morrison J