
ON APPEAL FROM THE SUPREME COURT OF TONGA

BETWEEN : SIONE SOAKAI

- APPELLANT

AND : KINGDOM OF TONGA

- RESPONDENT

Coram : Burchett J
Tompkins J
Neaves J.

Mr. W. Edwards for the Appellant
Miss Weigall for the Respondent.

Date of hearing : 30 May 1996.
Date of Judgment : 31 May 1996.

J U D G M E N T

This is an appeal by the Plaintiff in an action and cross-action arising out of dealings and contracts entered into between the Appellant, a roadworks contractor, and the government of Tonga. The judgment of the trial judge, Dalgety J., awarded the precise sums of T\$31,000 in damages to the Appellant in his action and T\$31,000 to the Respondent in its cross-action.

Early in the hearing of the appeal, it became clear that both sides considered that a new trial was appropriate. There were, in fact, a number of unsatisfactory features about the trial which was had in this matter. The pleadings failed to clarify the issues, and the major question between the parties was substantially bypassed. Although the statement of claim makes numerous references to misrepresentations, it does not spell out a case in negligence according to the principles of Hedley Byrne & Co.Ltd v. Heller & Partners Ltd [1964] AC 465 and Meates v. Attorney - General [1983] NZ LR 308. At the same time, fraud not being alleged, negligently erroneous advice seems to have been what the appellant intended to put forward as his case.

In all the circumstances, the trial seems quite apparently to have miscarried, and a new trial should be ordered on all issues. There should be provided an opportunity for the parties to put the pleadings in order; but, as some negotiations have taken place in an endeavour to resolve the matter, which is plainly desirable if it can be achieved, a short delay should be provided for.

Accordingly, the orders of the Court are that:

1. The appeal be allowed and the judgment and orders of the trial judge be set aside.
2. A new trial be ordered on all issues, both parties having leave to amend generally.
3. A directions hearing be held on a date to be fixed by the Chief Justice, but not before 14 days after today's date.
4. There be no order as to the costs of the appeal, but the costs of the first trial be at the discretion of the judge who hears the new trial.




BURCHETT J.


TOMPKINS J


NEAVES J.