

GJ
IN THE SUPREME COURT
LAND JURISDICTION
NUKU'ALOFA REGISTRY

NO. L. 11/2000

BETWEEN: FUND MANAGEMENT LIMITED - Plaintiff

A N D : TEVITA MISA FIFITA - Defendant

AND CASES 12/00 - 17/00

BEFORE THE HON MR JUSTICE FORD

AND LAND COURT ASSESSOR HON TU'ILAKEPA

Counsel : Mr Garrett for plaintiffs

Date of Hearing : 8 September, 2000

Date of Judgment : 8 September, 2000

ORAL JUDGMENT OF FORD J

The plaintiffs Fund Management Ltd and Tourist Services Ha'apai Ltd hold respectively a sub-lease of part lease 5405 of land at Kolofu'ou for a term from 18 December 1998 to 14 June 2043.

The defendants are, in one form or another, occupiers of parts of the land covered in the sub-leases.

The respective defendants' occupation of the land is either pursuant to a formal tenancy agreement or on some informal month to month basis or, in one case, the occupation is claimed to be illegal.

In all events, all the defendants were given formal notice to vacate the property by the plaintiffs around about the middle of June, 2000 followed by an eviction notice. The defendants did not respond.

The plaintiffs applied for an interim injunction seeking an order requiring the defendants to vacate the land. It was heard by the Chief Justice on the 20th July 2000. There are a number of cases in all, they are numbered L11/2000 to L17/2000. The Chief Justice dealt with them all together and I have adopted that same procedure.

His Honour refused the injunction application but made orders on the 24th July as follows:

"The plaintiffs to file amended statement of claim within 7 days. Defendants to file any application to join other parties etc. within the same 7 days. 14 days thereafter to file defence. Chambers hearing then to be fixed as a matter of urgency.

"His Honour also concluded his decision on the injunction hearing with the comment that the case "should be listed for hearing as soon as possible."

The plaintiffs then filed amended statements of claim on the 28th of July. No statement of defence has been filed by any defendants. On the 28th of August the plaintiffs filed an application for hearing by way of formal proof.

Because of the urgency requested by the Chief Justice I have heard this case today.

The case has proceeded on a formal proof basis. The plaintiffs called evidence from Miss Nakao who is CEO for both plaintiffs. Having heard her evidence, the court is satisfied on the balance of probabilities, that the plaintiffs have established the allegation made out in the amended statement of claim to the extent that they are entitled to have judgment entered.

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Before I go on I would like to say a word about service. There were no records on the Court file at the commencement of this hearing today confirming whether the amended statement of claim had been served on the defendants. Counsel for the plaintiff, during the afternoon break, completed and produced to the Court certificates of service confirming service on the defendants through their solicitor on the 17th of August 2000. He has assured me from the Bar that Counsel for the defendants, in accepting service, made no point of the fact that service was out of the time period stipulated by the Chief Justice in his order but just for completeness he has undertaken to file an affidavit early next week from the person who carried out the service just confirming that advice. (Counsel for the plaintiffs informed the Court at this point that it was he personally who served the amended pleadings)

I now set out the specific orders made in respect of each pleading:

L11/2000 - Judgment is entered for the plaintiff in the following terms:

(paragraph A of the prayer for relief is not pursued by the plaintiff)

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) An order is made granting immediate vacant possession of the land to the plaintiff;
- (c) No order is made as to damages;
- (d) the plaintiff is awarded costs fixed at \$200.00

L12/2000 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;

- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00

L 13/2000 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00

L 16/2000 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00

L 14/200 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00

L 15/2000 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00

L 17/2000 - Judgment is entered for the plaintiff in the following terms:

- (a) An order is made declaring that the plaintiff is the lawful occupier of the land;
- (b) an order is made granting immediate vacant possession of the land to the plaintiff;
- (c) the plaintiff is awarded costs fixed at \$200.00



NUKU'ALOFA: 8th September, 2000

Arthur J.
ACTING CHIEF JUSTICE