

[3] Under paragraph 6 "In consideration for the Landowner granting consent to Government to lease his tax allotment an amount of \$50,000 will be paid to the Landowner. Such amount will be deducted from the royalty payments that would be owed to the Land Owner, from his land that would be used as a quarry". It is not disputed that the Plaintiff has received the \$50,000.

[4] The Plaintiff complains:

- (i) That without his knowledge or permission the Government entered into an agreement with the Second Defendant to quarry the land on its behalf;
- (ii) That the Second Defendant has damaged top soil and useful trees on the land;
- (iii) That he was unaware that the \$50,000 paid to him was to be set off against the \$2 per tonne royalty payments due to him; and
- (iv) That he has been unable to obtain an account of the amount of rock materials removed from the land and that as a consequence he is unable to determine whether the Government owes him royalty payments and, if so, how much.

[5] On 9 September 2016 the writ was issued. The Plaintiff sought:

- (i) Declarations that the agreements between the Plaintiff and the First Defendant and between the First Defendant and the Second Defendant are illegal;
- (ii) Orders that the agreements both be "terminated forthwith";
- (iii) An order evicting the Second Defendant from the land;
- (iv) Damages against the Defendants amounting altogether to TOP\$500,000.00

(v) Costs.

- [6] No Defence has yet been filed. The 28 days period specified in RSC O.8 r3 has not yet elapsed.
- [7] On the same day the writ was issued the Plaintiff filed an ex parte application for interim injunctions against the Defendants. It sought:
- (i) Immediate termination of the agreements between the Plaintiff and the First Defendant and between the First and Second Defendants;
 - (ii) An eviction order against the Second Defendant.
- [8] On 12 September the application came before the President who, by Minute of even date, directed that the matter proceed on notice. The Plaintiff was directed to serve a copy of the Minute on both Defendants and this was done. No further notice of hearing was issued by the registry.
- [9] On 21 September the Plaintiff and the First Defendant appeared. There was no appearance by the Second Defendant.
- [10] After Mr Pouvalu had explained the nature of his application, referred to the evidence in support and outlined the reliefs sought, Mr Sisifa replied. He revealed that the matter had only come to his attention the afternoon before, that the President's minute had been overlooked and that accordingly no defence to the application had been filed. He had not had the opportunity to take instructions from the Ministry of Infrastructure. Despite these omissions however, he still wished to

oppose the grant of the injunctions sought on the ground that they did not meet the criteria long accepted by the Court and most recently explained in *Paea & Anr v Sika* CV 43 of 2016. Mr Sisifa also made it clear that the Crown intended to defend the claim. He noted that there was nothing in the contract exhibited to the Plaintiff's affidavit to prevent the First Defendant entering into the further contract with the Second Defendant. He did not however know how much had been extracted from the land and whether the First Defendant was indebted to the Plaintiff.

[11] While Mr Sisifa did his best in difficult circumstances I was firmly of the view that in the absence of any evidence or detailed instructions on behalf of the First Defendant a reliable evaluation of where the balance of convenience lay would be difficult to achieve. There was however, in my view a much greater difficulty, not for the Defendants, but for the Plaintiff.

[12] As the White Book states:

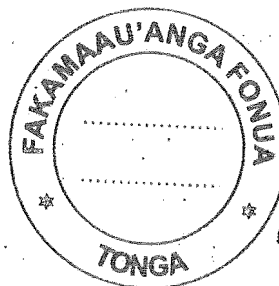
"The usual purpose of an interlocutory injunction is to preserve the *status quo* until the rights of the parties have been determined in the action. The injunction will almost always be negative in form to restrain the Defendant from doing some act. Very exceptionally it may be mandatory, requiring an act to be done" (RSC 029/1/2).

[13] The status quo in this case consists of two existing contracts and the continuing extraction of material as permitted by the second. In my opinion an injunction which is directed at *actions*, cannot be used as a means of terminating a contract, particularly when the rights of the parties under the contract have yet to be determined.

[14] The remaining issue, the continued performance of its contract by the Second Defendant, seems to me to be clearly in favour of the Second Defendant, even though he did not appear. As already mentioned, the existing *status quo* includes the Second Defendant's presence on the land, purportedly exercising his rights under his contract with the First Defendant (see exhibit D to the supporting affidavit). It is the duty of the First Defendant to account to the Plaintiff for the royalties due from the materials removed by the Second Defendant and I can see no risk or prejudice to the Plaintiff in allowing the extraction to continue until the rights of the parties have been established at trial.

- Result:**
1. The applications are dismissed.
 2. There will be no Order for costs.
 3. The action is to take its normal courses;
 4. A Statement of Defence should be filed within the next 15 days.

DATED: 23 September 2016




M. D. Scott
JUDGE