

07/05/19

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IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY

LA 22 of 2018

- 
- BETWEEN : TAMIANO TAUFU'AO FALEKAONO  
- First Plaintiff
  - AND : JENAIHOKULANI CHRISTOPHER FALEKAONO  
- Second Plaintiff
  - AND : VILIAMI FALEKAONO  
- First Defendant
  - AND : LOVELY MAKU  
- Second Defendant
  - AND : DAVID FE'AOMOENGALU FANIFO MAKU  
- Third Defendant
  - AND : SAMISONI P VAKA  
- Fourth Defendant
  - AND : JOHN MICHAEL P BAKER  
- Fifth Defendant
  - AND : PAULA PAHULU MOTU  
- Sixth Defendant
  - AND : POHIVA MOTULALO  
- Seventh Defendant
  - AND : MINISTER OF LANDS  
- Eight Defendant

rec'd 06/05/19  
HSC

TO : Mr. H. Tatila for both plaintiffs.  
Mr. C. Edwards Snr SC for first defendant.  
Ms. L. Tonga for second, third and fifth defendants.

Hearing of Application for security for costs : 18 April 2019

Ruling: 24 April 2019.

### RULING ON SECURITY FOR COSTS

- [1] Applications have been made by the first, third and fifth defendants for security for costs to be paid by the plaintiffs because the plaintiffs are ordinarily resident out of the jurisdiction of this Court. They respectively seek security in the sums of \$14,000, \$12,700 and \$12,925.00, a total of \$39,625. There are two plaintiffs but such a sum is quite substantial.
- [2] The plaintiffs do not dispute that they are resident overseas and that they should pay security for costs but they say that they can only afford to pay \$15,000 altogether. They are father and son.
- [3] The first defendant's concern is that his counsel's costs (who is a senior counsel) may be up to \$19,000 by the end of the action (an estimate of detailed costs was produced). Both the third and fifth defendants concerns are with the cost of their return airfares from the United States which cost over T\$4,000 for one person as well as their counsel's (Ms. Tonga's) costs. The plaintiffs do not dispute that amount for the airfares because they too live in the US.
- [4] It is true that counsel costs exceed \$10,000 in normal cases but the Courts have considered that security for costs should not be such that they discourage or shut out plaintiffs, who ordinarily reside overseas and who are unable to pay such security, from the Court, especially this Land Court, where land, the most valuable asset in the Kingdom, is adjudicated. The Courts have therefore ordered only a sum of S5,000 to be paid as security in the normal land cases.

[5] I consider that this is a normal land case and although there eight defendants, the issue involved, that is, whether or not the surrender was valid, is the only and main issue. I therefore consider that the same sum of \$5,000 should be ordered in respect of each application so that a total of \$15,000 is paid by both plaintiffs as security, a sum which they have acknowledged they can afford, and which does not shut them out from this Court.

[6] Accordingly, I order that the plaintiffs jointly and severally pay security for costs into Court -

(a) in respect of the first defendant in the sum of \$5,000;

(b) in respect of the third defendant in the sum of \$5,000;

(c) in respect of the fifth defendant in the sum of \$5,000,

by 31<sup>st</sup> day of May 2019, in default of which, their claim against the defendants shall forthwith be stayed.

NUKU'ALOFA: 24 April 2019.



L. M. Niu  
J U D G E