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IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

LA 27 of 2018

BETWEEN : SAMISONI TALIA'ULI

- Plaintiff

AND : 1. LITIA & TREVOR RONALD SIMPSON
2. MINISTER OF LANDS
3. INTERNATIONAL METROPOLE LTD

- Defendants

BEFORE HON. JUSTICE NIU

Counsel : Mrs Loupua Kuli for applicant (third defendant)
Mr Viliami Mo'ale for respondent (plaintiff)

Hearing: : Application for security for costs on 30 September 2019.

Ruling : 1 October 2019.

RULING

[1] The third defendant has applied for security for costs in the sum of \$5,000 to be paid by the plaintiff upon the ground that "the plaintiff may be unable to pay the costs of the said defendant if ordered to do so," such as is provided under Order 17 Rule 1 (b) of the Rules of the Court.

recd 03/10/19
JTB 1

[2] The basis for that application is simply the belief of the said defendant. He said so in paragraphs 3 and 4 of his supporting affidavit:

“3. I strongly believe the plaintiff has no asset in Tonga except the leased land no. 8322A which the third defendant currently holds the lease title until 2062.

4. I believe the plaintiff has money to pay the security for costs.”

[3] In opposition and denial of such belief, the plaintiff has filed an affidavit that he owns a motor vehicle valued at \$7,000 and crops valued at \$14,138, which in effect confirms the belief that the said defendant has that the plaintiff has the money to pay the security for costs which is being applied for.

[4] If the plaintiff does have the means to pay the security for costs, then he may have the means to pay the costs of these proceedings if ordered to do so, and so there may not be any ground to order him to pay the security applied for.

[5] If he does not have the means to pay the costs if ordered to do, but he does have a chance of success in his claim against the defendants, then the Court must not order that he pays the security, because he would not be able to pay it and his otherwise good claim may not be able to continue in Court. He would thereby be shut out from this Court simply because he has no money, and that cannot be right.

[6] I asked Mr Mo’ale upon what basis the plaintiff says that the use which the third defendant has made of the land of the lease has become an unlawful use or one which is in breach of the purpose of the lease, namely, “residential purpose”. He said that the unauthorised use was the renting out of rooms on the land for profit on a commercial basis. He says that that use of the lease is for “commercial purpose” and not “residential purpose”. Mrs Kuli disagreed with that and said that the tenants are only employees of the said defendant company. If that is so, the employees may still be paying rent if they are being provided free accommodation as part of their benefits as employees.

- [7] I do not need to decide that issue in this ruling because I have not heard the evidence on it nor have I heard both counsels' full submissions on the law pertaining to the same. The issue is important and there has not yet been any case like that that I am aware of and it needs to be decided. All I can say at this stage is that the plaintiff may have an arguable claim and he should not be barred from pursuing that claim if he cannot pay a security for costs. If he can pay, then he should not be ordered to pay it because the rules say that he should only pay it if he may be unable to pay it (if ordered to do so).
- [8] The applicant has the onus of persuading the Court that the security for costs should be ordered. The third defendant applicant has failed to discharge that onus and his application is dismissed with costs.

Nuku'alofa: 1 October 2019




Niu J
JUDGE