

**IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY**

Crown Law  
#1  
Sant fclp  
LA 16 of 2011

06/10/15

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**Between: FREE WESLEYAN CHURCH - Plaintiff**

**And:**

- 1. SERGAI BLISS**
- 2. MARY ORSER**
- 3. MINISTER OF LANDS**

**- Defendants**

**Mr. 'O. Pouono for the plaintiff**

**Mr. 'A. Kefu SCas Amicus Curiae**

**No appearance for the first and second defendants**

**Minute of the Chief Justice**

1. On 16 October 2014 Justice Cato made timetabling orders with a view to having this case heard at the next sitting of the Court in Vava'u. He directed that the case be called for mention in Tongatapu on 16 February 2015 to make sure that the timetable was being complied with.
2. As the first and second defendants are unrepresented Justice Cato directed that if they could not attend the next conference they would need to instruct an agent.

3. The case was called before me on 16 February 2015 but,as I have noted in my minute of 16 February 2015,there was no appearance by the first and second defendants. I adjourned the case to 19 February 2015 for reasons set out in my minute.
4. The Court then received two memoranda forthe first and second defendants, dated 10 February 2015 and 17 February 2015, which amongst other things stated that for reasons of illness the first and second defendants could not attend the 16 February 2015 or 19 February 2015 conferences. They had not instructed an agent to appear as Justice Cato had required.
5. On 19 February 2015 the case was again called before me to review the timetable. It became immediately clear that there was some confusion about what Justice Cato had ordered. The first timetable direction he had made was:

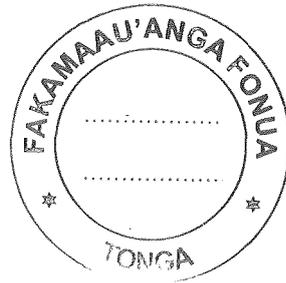
The Minister of Lands is joined as a party to the proceedings under Order 9. This is required because the First and Second Defendants are requiring a Deed of lease granted to the plaintiff to be cancelled.

6. Counsel appearing before me understood that the intent of this direction was to join the Minister of Lands as a third party in which case the first and second Defendants were required to issue a third party notice and had not done so. I decided to adjourn the case again to 3 March 2015 to consider this issue and its implications for the timetable and the possibility of a hearing in Vavu'u on the next Court circuit.

7. On 3 March 2015 the case was again called before me. I advised Counsel that in my view Justice Cato had joined the Minister of Lands as a defendant and not as a third party. This seemed apparent from the fact that the direction relied upon Order 9 Supreme Court Rules (not Order 10) and that there were no consequential directions for the service of a third party notice.
8. The result of this confusion is that that the Minister of Lands has taken no steps in the proceeding to date, there has been slippage in the timetable of 16 October 2014 and Counsel are agreed that the case cannot now reasonably be heard at the next Vavu'u circuit.
9. This case must however be progressed and I make the following directions:
  - a. The Minister of Lands is to file a defence to the claim (responding as best as it can to the positions taken by the first and second defendants) and to give discovery of documents within 21 days (24 March 2015)
  - b. Given that the Minister of Lands is now a party I see no need for an amicus curiae. The appointment of Mr Kefu SC as amicus curiae is discharged. I note that Mr Kefu SC has confirmed that he will take no further part in this proceeding.
  - c. I also discharge the timetable orders at paragraphs 6-13 (inclusive) and 15 of Justice Cato's minute of 16 October 2014.
  - d. The case will be called before me during the next Vavu'u circuit. At that time the case will be set down for hearing and all

consequential timetabling directions will be made. A notice will be issued by the Court convening that conference shortly.

10. I note again that the first and second defendants are unrepresented. Whilst it is their right to represent themselves it is clear from my reading of the file that they would benefit from the assistance of Counsel. It is strongly recommended that they instruct Counsel before the next conference.



O.G. Paulsen

**Dated:3 March 2015.**

**LORD CHIEF JUSTICE**