

file + Land Judgment file

13/02/13

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

LA 26 of 2011

BETWEEN : HIGHLAND DEVELOPMENT LIMITED
- *Plaintiff*

AND : 1. PHILIP G. FORBES
2. MO'ALE FINAU
3. GOVERNOR OF HA'APAI
4. MINISTER OF LANDS
- *Defendants*

L. M. Niu for the Plaintiff

First & Second Defendants in person

'A. Kefu (Solicitor General) for the third and fourth Defendants

DECISION

[1] The Writ and Statement of Claim were issued on 5 January 2012. Originally, there were two Plaintiffs however on 17 August 2012 I was advised that the first Plaintiff had died.

[2] The Statement of Claim seeks two principal orders:

- i) an order restraining "the Defendants from having a lease of the lands" (Nukupule Island) which are the subject matter of the action; and

- ii) an order directing the fourth Defendant to seek approval by Cabinet of the lease application of the second Plaintiff dated 27 August 2010.

[3] Defences were filed by the second, third and fourth Defendants but although the first Defendant did not file his own defence, the defence of the second Defendant (the first Defendant's legal advisor) states that "the first Defendant had done everything as according to law"

[4] This is an application by the First and Second Defendants to be dismissed from the suit under the provisions of O.9 r2 (a) of the Supreme Court Rules, applied by O.2 r2 of the Land Court Rules. With the agreement of counsel the application proceeds without the presence of an assessor.

[5] In support of the application, an affidavit was filed by the second Defendant. He gave a detailed account of the events preceding the commencement of the proceedings and stated at paragraph 35 that:

"the Government granted the lease of Nukupule to [the first Defendant] on 23rd September 2011."

According to paragraph 21 of the defence of the third and fourth Defendants, the lease to the first Defendant No.8100 was issued on 24 October 2011.

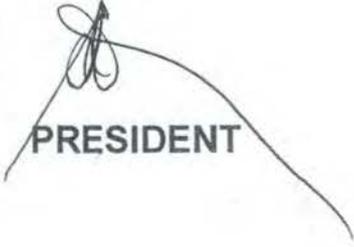
- [6] Mr. Niu accepted that, unknown to the Plaintiff, the lease had in fact already been issued prior to the commencement of the proceedings. In these circumstances the reliefs in the form that they were sought had been overtaken by events and were no longer available. Following the death of the first Plaintiff Mr. Niu had also found difficulty in obtaining instructions from the remaining Plaintiff however he understood that the intention was to proceed with the actions, suitably amended.
- [7] Whatever the Plaintiff's intentions may be, this application seeks dismissal from the suit as it now stands pleaded, not as it might in future be amended. Accepting the pleadings as they now stand, it is clear to me that the first and second Defendants have no case to answer.
- [8] In paragraph 22 of the statement of claim the Plaintiffs say that: "the defendants have acted wrongly and unlawfully as follows:." There then follow seven paragraphs of particulars which only mention the first and second Defendants once and contain no allegations of wrongdoing on their part. As has already been seen, the prayer of the statement of claim seeks no orders against either the first or second Defendant which are now available to the Plaintiff.
- [9] Mr. Niu pointed out that if the first and second Defendants were dismissed from the suit then it would still be open to the Plaintiff to file an amended claim again joining them as Defendants.

While that submission is plainly correct, I do not think that it can prevent the present application succeeding.

[10] The application is granted. The first and second Defendants are dismissed from the suit. They are to have their costs against the Plaintiff, to be taxed if not agreed.

NUKU'ALOFA: 15 February 2013




PRESIDENT

T.Piei
8/2/2013