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08/14/13

Achon Jato

IN THE LAND COURT OF TONGA

NUKU'ALOFA REGISTRY

LA 16 of 2013

BETWEEN : 1. 'UNUAKI 'O TONGA ROYAL UNIVERSITY OF TECHNOLOGY

2. 'ETUATE LAVULAVU

- Plaintiffs

AND : KINGDOM OF TONGA

- Defendant

Mrs D. Stephenson for the Plaintiffs

'A. Kefu (Solicitor General) for the Defendant

DECISION

[1] These proceedings were commenced by writ issued on 2 October 2013. In their Statement of Claim the Plaintiffs seek orders restraining the Defendant from:

- (a) terminating a tenancy agreement between the First Plaintiff and the Defendant dated 19 December 2008; or
- (b) entering into, taking possession of or evicting the Plaintiffs from the premises located on Taufu'ahau Road, Tofoa known as the Tonga National Centre; and

(c) alternatively, an award of damages in the sum of \$1,712,000 being the value of renovations and improvements carried out to the Tonga National Centre (TNC) by the First Plaintiff with the agreement of the Defendant.

- [2] On 2 October an ex parte application for an interim injunction in terms of (a) and (b) above was filed, together with a supporting affidavit by the Second Plaintiff which exhibited as "A" a copy of the tenancy agreement upon which reliance was placed.
- [3] I granted the interim orders sought until further order and adjourned the application for continuation inter partes on 16 October 2013.
- [4] On 16 October I raised the preliminary question of the Land Court's jurisdiction to deal with the action and with the agreement of counsel argument was adjourned to later that day.
- [5] Mrs Stephenson filed a written submission for which I am grateful. She submitted that: "the First Plaintiff is the tenant of the TNC comprising the land and buildings located at Taufa'ahau Road, Tofoa". When it was pointed out that there is no reference to the land in the agreement she suggested that grant of the land was to be inferred from paragraph 11 of the agreement which requires the Plaintiffs "to be responsible for obtaining full insurance coverage for the TNC and all its contents and *surrounding areas*." (emphasis added).

[6] Mrs Stephenson accepted that the tenancy had not been registered (see Section 126 of the Act). She also accepted that tenancies are not among the various interests in land recognised by the Act. She further accepted that Section 13 of the Act prohibits agreements “for profit or benefit relating to the use or occupation of land” other than in the manner prescribed in the Act, without the permission of the Minister of Lands.

[7] Mrs Stephenson grounded her claim to jurisdiction on subsection 149(1)(b) of the Act which gives the Land Court jurisdiction:

“to hear and determine all disputes, claims and questions of title *affecting any land or interest in land* in the Kingdom” (emphasis hers)

Unfortunately the words “of title” immediately appearing before the word “affecting” was not emphasised by Mrs Stephenson. In my view, however, it is clear that the section, properly construed, only grants jurisdiction where a “dispute, claim or question of title” is concerned. In my opinion, to read the section in any other manner would grant the Land Court jurisdiction to deal with any dispute which is in any way connected with land (e.g. noise, smell or other discharges from land) and I do not accept this to be the case.

[8] In my opinion, all that the Plaintiffs may have in this case is a tenancy of the buildings comprising the TNC and the right to use the land on which the buildings stand and which surrounds them. As I see it,

this use of the land is merely a collateral licence which endures so long as the tenancy remains alive; once the tenancy is determined, the licence is also revoked.

- [9] Mrs Stephenson placed reliance on *Tonga Industries Traders Ltd v Shell Company Pacific Island Ltd* [2005] TOLC3; [2005] TOSC5; LA 002 2005 in which the Plaintiff sought:

“payments due under a tenancy agreement between the parties, the subjects of the tenancy agreement are described in it as buildings on the land together with the use of land adjoining the buildings”.

The Court concluded that:

“this is therefore clearly a case where the Court is asked to hear and determine a question or amount of rent or a claim in respect of an *interest of some kind* in land” (emphasis added).

With respect I decline to follow this conclusion since the only interests in land which can legally be created are those permitted by the Act. All other purported interests are outside the purview of the legislation. It is not enough, in my opinion, to propound some vague interest in land unrecognized in the Act for the Land Court’s jurisdiction to be invoked.

[10] In my opinion, the correct position is as explained in Maka v Kainga [2006] To. L.R. 43. In the present case there is no lease, merely an agreement (the tenancy) to use buildings and an associated and implied agreement (a licence) to use the land surrounding the buildings. No interest in the land known to the Act was created by the tenancy which, even viewed as a permit, was not registered and was therefore not “effectual to pass any interest in land” (Section 126).

[11] As I find, the Plaintiffs have no interest in the land and there is no dispute falling within the purview of Section 149 (1)(b). For the same reason, the alternative claim for damages is excluded by Section 149(1)(e). I do not accept that the jurisdiction of the Court can be extended, as opposed to invoked, by recourse to Section 150.

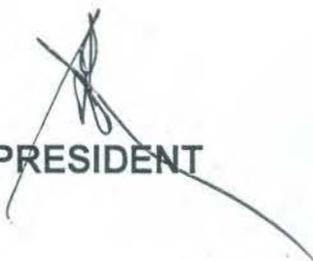
Result:

1. I find that the Land Court has no jurisdiction to entertain the Plaintiffs' claim which is therefore struck out. The interim injunction granted on 2 October 2013 is discharged forthwith.
2. Defendant's costs to be taxed if not agreed.

DATED: 8 November 2013.

N. Tu'uholoaki
17 October 2013




PRESIDENT