

S/General

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Judgment  
file

**IN THE LAND COURT OF TONGA**

**NUKU'ALOFA REGISTRY**

**LA 6 of 2007.**

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**BETWEEN: PAU MO LEVUKA LIKILIKI - Plaintiff**

**AND : TONGA WATER BOARD - Defendant**

**BEFORE THE HON. JUSTICE ANDREW**

**Counsel : Mrs Vaihu for the plaintiff.**

**Date of Hearing: 31<sup>st</sup> July, 2007.**

**Date of Judgment: 7<sup>th</sup> September, 2007.**

**Judgment**

The Plaintiff's sought an eviction order against the defendants from its land, being a tax allotment situate at HIHIFO, HA'APAI, Reference Deed of Grant 316/43 with an area of 3A, 3R 29 P. It was referred to as block 152137, LOT 2 (the Land). In the course of the hearing it was apparent that an alternative claim for compensation and rent or an occupation fee would be accepted as a compromise to the claim for eviction.

The defendant Water Board have failed to file any defence to the claim and appear to have ignored any such claim in the recent past for their use and occupation of the Plaintiff's tax allotment even though extensive infrastructure and office buildings have been erected by

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them on the plaintiff's land. The Water Board stores, generates and pumps water from that infrastructure to the surrounding area.

The plaintiff has called evidence from the Lands Department and the Registrar of Lands which establishes beyond doubt that he is the registered owner of this land.

The evidence and various correspondence between the Plaintiff and the Water Board establishes that rent, or an occupation fee, was paid to the Plaintiff in the past in the sum of \$300 up to 17<sup>th</sup> October 2006. Since that time there appears to have been no payments made as the parties discussed such matters as the Board acquiring the land and as to compensation and an appropriate amount for rent or an occupation fee. The correspondence reveals that the Water Board have continually promised to put the matter before their Board but have not done so and have ignored the plaintiff's claim which is consistent with their disinterest in these proceedings.

In practical terms any order for eviction would involve serious disruption to the Water supply for the HA'APAI community but it is only appropriate that the Water Board should continue to pay an appropriate amount for rent or as a reasonable occupation fee fixed as the open market value of the land for the defendant's occupation. Under S.149(e) of the Land Act, the Land Court may determine any question relating to rent in respect of any allotment, lease sub-lease or interest of any kind in land.

In TUKUAFU v LATU 2005 TOCA 12, a matter was remitted to the Land Court to determine a reasonable occupation fee.

The previous amount of rent was fixed at \$300 per month. Since then however there has been further infrastructure built on the plaintiff's allotment. In my opinion an appropriate market value would, including an element of adjustment for the additional infrastructure and increased value of the property would be a sum of \$500 per month and that should date from the 17<sup>th</sup> October 2006.

I give judgment to the Plaintiff in the sum of \$5,500 representing the past payment of rent up to the 17<sup>th</sup> October 2007.

Thereafter the amount of rent payable by the defendant to the Plaintiff is fixed at \$500 per month. There should be a review of the amount of rent every two years.

I award costs to the Plaintiff as agreed or taxed.

DATED: 7 September, 2007.

