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IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION

AM 29 of 2013
[CV 51 of 2009]

BETWEEN: SANITIVINO HALAPIO - Appellant

AND : AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED - Respondent

Ms L. Tonga for the Appellant

Mrs P. Tupou for the Respondent

JUDGMENT

- [1] On 13 May 2009 the Respondent obtained judgment against Talifolau and Jacinta Koto in the sum of \$70,702.80 with interest accruing plus costs.
- [2] On 13 March 2013 a writ of distress was issued in the sum of \$129,621.69 with the consent of counsel both for the Judgment Creditor and the Judgment Debtors.
- [3] When the bailiff attempted to execute the writ, the Appellant claimed that certain of the items to be seized belonged to him, and not to the Judgment Debtors.

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- [4] On 6 August 2013 the interpleader hearing took place before the Acting Chief Registrar. On the same day, the Appellant's application was dismissed. This is an appeal against that dismissal.
- [5] In the grounds of appeal filed on 15 August 2013 the Appellant says, inter alia, that the goods were seized from his home, not the home of the Judgment Debtors and that the mere fact that the Judgment Debtors had been occupying the Appellant's home did not mean that the contents of the home belonged to them. In paragraph 4 of the grounds of appeal it is stated that the Appellant is the brother of the female Judgment Debtor. Ground 5 of the grounds of appeal states that the Chief Registrar failed to give reasons for his decision.
- [6] In a notice of opposition to the notice of appeal, counsel for the Respondent submitted that at the hearing before the Acting Chief Registrar the Appellant was unable to provide any evidence that the premises from which the goods were removed or the items to be removed belonged to him: "The Interpleader has been given every opportunity to prove his claim but has failed (to do so)". It was for this reason that the application was dismissed.
- [7] The central difficulty about this appeal is that the Appellant has failed to provide this Court with any transcript or other acceptable account of what occurred before the Acting Chief Registrar. Ms Tonga was herself not representing the Appellant at that time and was unable to tell me precisely what occurred at the hearing. As pointed out by Mrs Tupou, there was nothing to prevent the Acting Chief Registrar being

requested to provide his reasons for dismissing the application, in writing.

- [8] Where a party wishes to attempt to persuade the appellate court that the lower court was wrong, the first essential is to provide the appellate court with an acceptable account of what actually transpired below. Only after this has been done will it be possible for the appellate court to decide, after examining that account, whether or not the lower court erred.
- [9] The grounds of appeal advance numerous statements of fact which are unsupported by evidence. They do not provide any basis upon which this Court could reach the conclusion that error has occurred.
- [10] As pointed out by Mrs Tupou, there have been numerous attempts by the Judgment Debtors to delay enforcement of the judgment against them, entered into 2009. Their actions are beginning to verge on the vexatious.

Result:

The appeal is dismissed with Respondent's costs to be taxed if not agreed.

DATED: 15 November 2013.




M.D. Scott
Chief Justice