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IN THE SUPREME COURT OF TONGA

APPELLATE JURISDICTION

CIVIL APPEAL NO.AM 24 of 2011

NUKU'ALOFA REGISTRY

[MC CV201 of 2010]

BETWEEN:

- 1. LAUCALA POHIVA
- 2. MATENI TAPUELUELU
- 3. NUSIPEPA KELE'A

- Appellants

AND : WILLIAM CLIVE EDWARDS

- Respondent

Ms Kioa for the Appellants

W. Edwards for the Respondent

JUDGMENT

1. On 17 June 2011 judgment was entered in favour of the Respondent in the Nuku'alofa Magistrates' Court. On 20 June 2011 a notice of appeal was filed. The grounds of appeal were stated to be as follows:

- "1. The Magistrate was wrong in allowing the claim
- 2. Alternative – the learned Magistrate was wrong in allowing the full claim of \$10,000.
- 3. It was wrong to allow all the costs."

2. On 10 February 2012 the Respondent filed the present application to strike out the appeal. Among a grounds advanced in support of the application the Respondent submits a) that Appellants have failed to comply with the requirements of Section 75 (1) of the Magistrates'

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Courts Act (Cap.11) and b) that they have failed to prosecute the appeal with reasonable despatch.

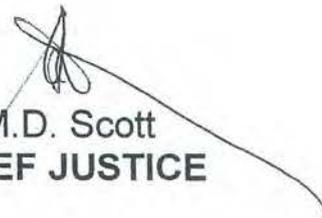
3. In his supporting affidavit the Respondent also avers that the Appellants, taking advantage of the delay in disposing of the appeal are repeating the defamations complained of in the Magistrates' Court.
4. The application first came before me on 22 February 2012. After discussion it was agreed that detailed and adequate grounds of appeal would be filed without delay and that translation of the relevant pages of the transcript would be undertaken by the Appellants. The strike out application was adjourned generally.
5. On 26 April the Respondent wrote to the Court seeking restoration of the application. The Court was advised that no particulars of the grounds of appeal had been provided. Today I was advised by Ms Kioa that she did not know whether any of the appeal papers had been translated.
6. It is worth remembering that rights of appeal are statutory creations (see e.g. *National Telephone Co. Ltd v Postmaster General* [1913] 2KB 614) and therefore the conditions imposed by statute must be complied with.
7. Section 75(i) requires an appellant to state his "general grounds of appeal". The mere statement that the Magistrate "was wrong" does not comply with this requirement (see Supreme Court Practice 1988 paragraph 59/3/5).

8. Section 78 requires the Registrar "as soon as possible" (after receipt of the appeal documents) to give notice of the date fixed for the hearing of the appeal. This requirement can only be satisfied if in fact the appeal is ready for hearing. In the present case, nearly 12 months have elapsed without the Appellants having ensured that the appeal was ready for disposal.
9. In my opinion the principles which require appeals to be lodged in time also govern the requirement that once lodged, appeals must be prosecuted in a timely manner. This is especially the case when, as is the case in appeals from Magistrates' Courts in Tonga, the filing of an appeal is accepted as staying the judgment under appeal.
10. In my view there has been inordinate and inexcusable delay in the prosecution of this appeal and it has caused substantial prejudice to the Respondent. Despite being given more than enough time to comply into the directions given by consent on 22 February there has been a complete failure by the Appellants to comply.
11. I am satisfied that it is right and proper that this appeal be struck out. In exercise of the inherent jurisdiction of the Court I so order.

DATED: 5 June 2012.

N. Tu'uholoaki
25/5/2012




M.D. Scott
CHIEF JUSTICE