

IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION
NUKU'ALOFA REGISTRY

CIVIL APPEAL NO.AM 19 of 2011

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BETWEEN: 1. ANZ BANK
2. VILIAMI HIA
3. SIOFILISI FIEFIA

- Appellants

AND : TAI TAUMOEPENU

- Respondent

Mrs P. Tupou for the Appellants

Mr K. Piukala for the Respondent

JUDGMENT

1. The Respondent filed a statement of claim in the Magistrates' Court on about 11 August 2010. He claimed that when he went to cash 3 cheques at the Appellant bank the bank refused to complete the transaction which caused him "lost face anguish and unhappy". "The Plaintiff return with a broken heart and full of upset."
2. On 20 August 2010 the Appellants were granted 14 days to file their defence and the matter was adjourned to 8 September. On 8 September there was no appearance by the Appellants and no defence had been filed on their behalf.
3. The matter came on for hearing on 11 October. There is a dispute as to whether the Appellants were given notice of that hearing. According

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to Mr Piukala the matter was listed. According to Mrs Tupou it was not.

4. There is a transcript of the proceedings on 11 October which shows that the Respondent gave evidence on oath. At the conclusion of the evidence Mr Piukala addressed the Court. He said:

“The sad part about the respondents and the appellant is that the respondents or ANZ Bank was so careless to make sure they treat their customers the right way ... the [Plaintiff] lost his face and was so embarrassed [because of] the wrong leading that happened and the wrong decision that was given”.

5. The (entire) judgment dated 11 October 2000 reads as follows:

“Claim for \$2000 granted and to be paid to the Plaintiffs within 2 months and the Court costs of \$24 plus lawyer’s fees of \$600 to be paid to Kelepi Piukala.”

6. An attempt to have the judgment set aside was refused. An appeal against the refusal was rejected by the magistrate on 16 February 2011 on the ground that the appeal had not been filed within the 10 days required by Section 75(1). Apparently the magistrate took the view that the requirements of Section 77 had not been satisfied.
7. A second appeal (the present appeal) was filed directly with the Supreme Court on 22 March 2011. The Appellants seek an order that the first appeal be heard and that the action be remitted to the Magistrates’ Court for re-hearing.

8. Section 81 of the Magistrates' Courts Act reads as follows:

"No decision of a magistrate shall be reversed or varied for any defect in form therein or in any of the proceedings before the magistrate but every appeal shall be decided on its merits only."


9. In my opinion there are two fundamental difficulties about the magistrate's judgment set out in paragraph 5 above. The first is that no reasons are given for the award. Magistrates should remember that "reasons for judgment are a fundamental attribute of the common law". Without reasons this Court cannot know what facts were found by the magistrate or whether he applied the law correctly, or whether there is a question of law involved at all. (see *Bell-Booth v Bell-Booth* [1998] 2 NZLR 2.

10. The second difficulty is that while the whole basis of the Respondents' claim was injury to his feelings, the common law does not recognize such an injury as a cause of action or a ground for awarding damages (see *Addis v Gramophone Company Limited* [1909] AC 488 H.L.)

11. These difficulties are reason alone to set aside the judgment and to remit the action to the Magistrates' Court for re-hearing before a different magistrate.

DATED: 6 July 2011.




M.D. Scott
CHIEF JUSTICE