

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

AM 10 of 2009

BETWEEN : 1. **KASANOVA FONUA**
2. **HELENI FONUA** - **Appellants**

AND : **SEMISI ONGOSIA** - **Respondent**

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr Tu'utafaiva for the Appellants
Mr Fifita for the Respondent

Date of judgment: 14 August 2009.

JUDGMENT

This is an appeal from the Magistrates Court in which there was a claim for breach of an agreement between the parties. The claim was described as : "The Plaintiffs claim \$9,931.75 from the defendant. \$8,000 of the claim is the agreement the plaintiffs had with the defendant to mend and enlarge to run a curry business there. \$1,931.75 as the value of the goods of the plaintiffs that was looked after and maintained by the defendant."

The Court found that the defendant had breached the agreement between the parties and found for the plaintiff but was not satisfied that the plaintiff had properly established the damages involved. The claim for \$8,000 was denied and the Court found damages of only \$1,701.75 had been proved. The Court said:

"The valuation of the existing home is \$8,000 despite the defence challenging this as being too excessive it should have been \$1,500. The total amount was calculated without a breakdown to know what the

materials were and the value of the building before the mending and enlargement that were used. It is important to differentiate this it is the responsibility of the plaintiff to prove this. It is not the duty of the Court to speculate, it is up to the plaintiff to bring a basis to base the amount on it is for the plaintiff to bring reliable evidence to value the amount of loss because despite that it is proven that the defendant breached the agreement, it is up to the plaintiff to prove the value of the loss spent in mending and enlarging the building."

Reliance was placed on NICHOLAS v OFA SIMIKI CV215/2003 Supreme Court of Tonga.

The learned Magistrate had accepted the evidence of the Plaintiff and had not accepted the evidence of the defendant. The plaintiff called evidence from Mr Fapoi, the Managing Director of Hasdra Drafting and Building Construction Limited. He gave expert evidence of the valuation of the properties concerned and also of the existing house valued at \$8,000. He was accepted by the Court as an expert witness and as a reliable witness. In my view the evidence of Mr Fapoi did support the plaintiffs claim that the valuation of the house was \$8,000. That was clearly in evidence and I think the Courts assessment of the plaintiff's damages was against the evidence and the weight of the evidence which had been found to be reliable. I think the assessment of the damages demonstrated an error on the Court's behalf.

In the circumstances I think that the appeal should be allowed and the matter should be remitted for Re: Hearing before another Magistrate.

ORDER

Appeal allowed. The matter is remitted for Re: Hearing before another Magistrate.

DATED: 13 August 2008.



Judges
JUDGE