S. Sisifa

19/05/17

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IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY CV 48 of 2014

BETWEEN: PUBLIC SERVICE ASSOCIATION INCORPORATED

First Plaintiff

AND: SAMUELA 'AKILISI POHIVA

Second Plaintiff

AND: THE KINGDOM OF TONGA

First Defendant

AND: FRIENDLY ISLANDS SATELLITE COMMUNICATIONS LIMITED (trading as Tongasat)

Second Defendant

BEFORE THE LORD CHIEF JUSTICE PAULSEN

Counsel: Mr. L Niu SC for the plaintiffs (on agency instructions for Dr R. Harrison QC)
Mr. S Sisifa SC for the first defendant
Mr. W Edwards for the second defendant

Date of Hearing: 11 April 2017
Date of Ruling: 19 May 2017

RULING

Received 19/5/2017

The plaintiffs' applications

[1] This ruling concerns applications by the plaintiffs for leave to file *nunc pro tunc* an amended statement of claim, for further and better discovery against both defendants and for an order debarring the defendants from defending the plaintiffs' claim by way of enforcement of outstanding costs awards.

[2] The first defendant (the Kingdom) has not opposed any of the orders sought by the plaintiffs.

[3] The second defendant (Tongasat) on the other hand opposes each of the plaintiffs' applications.

[4] Tongasat argues that the plaintiffs should not be granted leave to file an amended statement of claim because they are seeking to raise new causes of action in respect of which they have no standing and because the causes of action are time barred.

[5] Tongasat opposes the application for further and better discovery principally on the grounds that the documents sought are not relevant to any matter the plaintiffs can legitimately raise in the action and disclosure of them is unnecessary.

[6] The application to debar Tongasat from defending the action is opposed on the basis that it has a right of indemnity for the costs from the Kingdom and that it has an unresolved claim for costs against the second plaintiff in other proceedings.

The original claim

[7] The plaintiffs' original statement of claim focuses on a payment of USD$25,450,000 (which for reasons that will become clear I refer to as the second tranche payment) made by the Government of the People's Republic of China (PRC) to the Government of Tonga in around May 2011 and paid to or for the benefit of Tongasat in around June 2011.

[8] The plaintiffs plead that the second tranche payment was an aid grant and described as such under an Agreement on Economic and Technical Co-operation between the Governments of Tonga and the PRC dated 19 April 2011 and also 'public money' within the meaning of the Public Finance Management Act 2002 (Act). The essential allegation is that the payment to or for Tongasat was unlawful in breach of the Act (the particulars of which are set out in para 10 of the original statement of claim).

[9] The original statement of claim anticipates a possible contention by the defendants that lawful authority for the payment of the second tranche to or for Tongasat was conferred by an alleged agreement between Her Royal Highness the Princess Salote-Pilolevu Tuita and the then Prime Minister of Tonga, Dr Feleti Sevele, of 16 November 2010 (para 11). This approach of anticipating the defence (which in my view is not desirable) was adopted again in the amended statement of claim.

[10] There are two causes of action in the original statement of claim. In the first cause of action the plaintiffs seek a declaration that the second tranche payment 'remain[s] the lawful property of the Government (or Kingdom) of Tonga'. In the second cause of action the plaintiffs require

Tongasat to account for the second tranche payment pursuant to a remedial constructive trust, or that it restore the second tranche payment to the Kingdom for which it has been unjustly enriched, or that it pay damages for converting the second tranche payment to its own use and benefit.

The strike out application

[11] Before filing statements of defence the defendants applied to strike out the original statement of claim. The grounds relied upon included that the plaintiffs had no standing and that the statement of claim disclosed no cause of action against the defendants. The application to strike out was dismissed by Scott LCJ. The relevant paragraphs of his ruling are as follows:

> [10] In the present case, the decision impugned, namely the decision to disburse the grant aid funds to [Tongasat] and others is now final and complete; the money has been disbursed. The central legal question which is whether the funds were lawfully or unlawfully disbursed seems to me to be unaffected by the passage of time and to be capable of being critically examined either in the civil or the revisional jurisdiction of the Court. The claim for damages favours the former.
>
> [11] That the decision to disburse these funds has been a matter of national controversy since it was taken is clear from exchanges of letters and the questions and motions in Parliament which followed within weeks of the decision being taken.....
>
> ....

> [13] Mr Stanton advanced several technical arguments in support of his submissions relating to lack of standing. In my view however the Court's discretion is sufficiently broad properly to entertain proceedings for a declaration commenced by a respected and senior member of Parliament who complains of the unlawfulness of the actions of the previous Government. The standing of the First Plaintiff is less clear. It does not however seek relief for itself and its presence in the suit seems to add little of value to the proceedings. At the very least, however, the members of the trade union are presumably taxpayers and have an interest in the lawfulness of Government expenditure for that reason alone. I am satisfied that the Second Plaintiff has sufficient standing to bring these proceedings and see no advantage in dismissing the First Plaintiff from the suit.

[12] There was no appeal from those particular findings of Scott LCJ although the plaintiffs successfully appealed from orders in relation to security for costs (*Public Service Association v Kingdom of Tonga* [2015] Tonga LR 439). However relevant to the issue of the plaintiffs' standing I note that in its ruling the Court of Appeal, said at [6]:

> It is fair to say, however, that the present proceeding appears to be the most convenient means of having the Supreme Court rule on the legality of the payment to Tongasat.

Tongasat's statement of defence

[13] The logic underlying Tongasat's statement of defence is sometimes difficult to follow. It pleads a great deal of factual material but it is clear that there are important pieces of the jigsaw missing. However,

it does admit that the second tranche payment was paid to it or for its benefit (para 11) but denies that the second tranche payment was either aid grant money or public money. It says the money was trust money within the meaning of the Act to which it was beneficially entitled. The Kingdom pleads the same defence in its statement of defence.

[14] At this stage it will be useful if I set out some of the factual allegations made by Tongasat in support of its defence which provide context for what follows.

[15] Tongasat pleads that it had an Exclusive Agency Agreement with the Kingdom to market and manage the licensing and frequency assignments of orbital slots registered by the Kingdom with the International Telecommunications Union (para 6(a) of the statement of defence).

[16] A dispute arose with China Electronic System Engineering Company (CESEC), a corporation associated with the People's Republic of China (PRC), over its unlawful use of the orbital slot at 130°E (para 6(b) and (c)).

[17] Tongasat says it concluded on behalf of the Kingdom a settlement with CESEC under which CESEC would pay USD$49,900,000 in two tranches of USD$24,451,000 on 31 July 2008 (the first tranche payment) and USD$25,449,000 on 31 December 2010 (the second tranche payment) and that Tongasat was to receive 50% of the first tranche payment and, subject to further negotiations, 50% of the second tranche payment (para 6(f)).

[18] The agreement was, Tongasat pleads, ultimately recorded at the request of CESEC and the PRC as the payment of aid grant money (and not as settlement of the dispute) for reasons of 'State discretion which [the Kingdom] agreed to but in the knowledge that it was a payment for the unlawful use of the orbital slot...' (para 6 (g)).

[19] On 14 July 2008 the Kingdom of Tonga and the PRC entered into an Agreement on Economic and Technical Co-operation (under which I note that the first tranche payment is described as a payment in 'grant aid to support the economic and social development of the Kingdom of Tonga').

[20] Tongasat pleads a decision by His Majesty's Privy Council to approve payment of the first tranche payment to Tongasat (para 6(j)) and that Tongasat and the Kingdom agreed on 30 April 2008 to mutually terminate the Exclusive Agency Agreement subject to the preservation of Tongasat's contractual and proprietorial rights (para 6(k)).

[21] Tongasat alleges that it conducted negotiations with the successive Prime Ministers, Dr. Feleti Sevele and Lord Tu'ivakano, which resulted in 'a letter [to Lord Tu'ivakano] on 8 April 2011 confirming instructions for a payment of the [second tranche payment]' (para 6(k), (l) and (m)).

[22] Tongasat then pleads that the second tranche payment was collected by the Kingdom and paid to it in performance of its obligations under the Exclusive Agency Agreement (para 6(p)) and later that it received the second tranche payment in consideration for the mutual termination of the Exclusive Agency Agreement (para 19 and 20(a)).

The reason for the amendment

[23] In his written submissions for the plaintiffs (para 14) Dr. Harrison makes the point that in its statement of defence Tongasat (and equally the Kingdom) did not confine itself to the pleaded second tranche payment but relied on the Exclusive Agency Agreement (and its termination) and the first tranche payment. He notes that the defendants raised the important issue, on which the present claim now seeks to build, of the inter-relationship between the first and the second tranche payments'. Specifically Dr. Harrison refers, with reference to Tongasat's statement of defence, to paras 5, 6 especially (a), (f), (g), (h)-(j) in relation to the first tranche payment; 6(k) and (q) in relation to the second tranche payment; 10-11 and 19 and 20(a) in relation to the allegation that the first and second tranche payments were consideration for the mutual termination of Tongasat's Exclusive Agency Agreement.

[24] The plaintiffs say that prior to receiving the defendants' statements of defence and discovery they were unaware of the terms of Tongasat's Exclusive Agency Agreement, the fact of the First Co-operation Agreement with the PRC of 14 July 2008 and the payment of the first tranche payment under that agreement, or of the termination of the Exclusive Agency Agreement with effect from 5 September 2008 followed by the payment of the first tranche payment to Tongasat. Tongasat does not accept the plaintiffs' lack of knowledge of all of these matters but I need not (and indeed could not) make any findings one way or the other to determine the applications that are before me.

The amended statement of claim

[25] The plaintiffs' amended statement of claim repeats the plaintiffs' original claims with only minor changes. The preliminary allegations in respect of those claims are contained in paras 1-4, 14-15, 17-18 and the two original causes of action are pleaded in Part II paras 26-32 of the amended statement of claim.

[26] The amended statement of claim differs from the original statement of claim in two principal respects. First, it adds new preliminary allegations which refer specifically to the matters of which the plaintiffs say they were previously unaware. These are contained in paras 5-6, 7-9 and 12-13 of the amended statement of claim. Secondly, and more significantly, the plaintiffs have added two new causes of action in respect of the first tranche payment (of which it also says it was previously unaware). These are contained in Part I paras 19-25 of the amended claim.

[27] Importantly, the causes of action in Part I in relation to the first tranche payment mirror the original causes of action in respect of the second tranche payment that are now in Part II of the amended statement of claim.

The agreed approach to the application to amend

[28] The parties agree that the plaintiffs' application for leave to amend the statement of claim to raise the new Part I causes of action should be determined on strike out principles, that is the amendment should be allowed unless I am satisfied that the new causes of action would be

struck out as disclosing no reasonable cause of action or that they are time barred.

[29] Dr. Harrison referred me to my ruling in related litigation *Friendly Islands Satellite Communications (Tongasat) Ltd and ors v Pohiva and ors* [2015] Tonga LR 199 at [46] as follows:

> No party should have his claim denied without a hearing in the ordinary way, except where the claim is so hopeless that it cannot possibly succeed. The Court will exercise its jurisdiction to strike out sparingly and will generally only do so when there is no reason to suppose the plaintiff will be able to remedy deficiencies in its pleading by amendment. The application proceeds on the assumption that the facts pleaded in its statement of claim are true and where the application relies upon O.8 R.8(1)(a) no evidence is to be heard.

[30] Mr Edwards referred me to extracts from the White Book including this from 1999 Vol 1 18/19/10:

> So long as the statement of claim or the particulars (*Davey v Bentinck* [1893] 1 QB 185) discloses some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak and is not likely to succeed, is no ground for striking it out.

[31] In the context of a strike out application based on the allegation that the claim arose outside the period of limitation I gain assistance from the judgment of Tipping J in *Trustees Executors Limited v Murray & Ors* [2007] 3 NZLR 721 at [33]:

> I consider the proper approach ....is that in order to succeed in striking out a cause of action as statute barred, the defendant must satisfy the court that the plaintiff's cause of action is so clearly statute barred that the plaintiff's claim can properly be regarded as frivolous, vexatious or an abuse of process. If the defendant demonstrates that the plaintiff's proceeding was commenced after the period allowed for the particular cause of action by the Limitation Act, the defendant will be entitled to an order striking out that cause of action unless the plaintiff shows there is an arguable case for an extension or postponement which would bring the claim back within time.

The limitation period

[32] Tongasat relies upon section 16(1) of the Supreme Court Act which relevantly provides:

> It shall not be lawful to sue any person for debt or damages after the expiration of 5 years from the date on which such liability was incurred nor to sue for property which has been in the undisputed possession of any person for more than 5 year....

[33] There is no dispute that the disbursement of the first tranche payment occurred outside the period of 5 years before the plaintiffs sought to add the Part I claims.

[34] Mr Edwards argues that the plaintiffs' are embarking upon an inquiry into whether the payment of funds to Tongasat were made in accordance with the Exclusive Agency Agreement and their clams are therefore for breach of contract for which the remedy is damages. He

referred specifically to paras 22-25 of the amended statement of claim to support that submission.

[35] Turning to the Part I causes of action, Mr Edwards acknowledged that the first cause of action seeks declaratory relief only but argues in reliance upon *Trawnik v Ministry of Defence* [1984] 2 All ER 791 that the plaintiffs cannot avoid section 16 by seeking a declaration rather than making a direct claim for damages in contract.

[36] This submission misunderstands the plaintiffs' claim. The plaintiffs are not bringing a claim in contract. They are not seeking to enforce the Exclusive Agency Agreement against Tongasat. The plaintiffs' complaint is that Tongasat unlawfully received payment or a disposition of public money to which it is not entitled and cannot lawfully retain. It is a public law not a private law action. It is Tongasat that sets up the Exclusive Agency Agreement to justify the payment. The plaintiffs could just as well (and perhaps should) have pleaded to Tongasat's reliance upon the Exclusive Agency Agreement, and any other matters it might raise, by way of a formal reply to the statement of defence and thereby avoided the objection Tongasat now raises.

[37] I am also not at all satisfied that *Trawnik* is good law in Tonga. As far as I am aware the only time it has been referred to is in *Tu'i'onetoa v Saulala* (Unreported Supreme Court, CV 7 of 2014, 12 September 2014, Scott LCJ) where the Judge's comments were clearly *obiter* and irrelevant to any issue he had to decide.

[38] *Trawnik* is also distinguishable from the present case. In *Trawnik* the plaintiff's private law claim against the Crown was in tort for which the

Crown had a statutory immunity. The plaintiff sought to avoid the immunity by seeking redress by way of declaration rather than damages. The plaintiffs' claim in this case is not a private law action and unlike the statutory provision in issue in *Trawnik* section 16 does not confer a general immunity from suit nor does it prevent a plaintiff from pursuing any particular cause of action other than for the recovery of debt.

[39] As far as the second cause of action is concerned the plaintiffs are seeking monetary relief albeit not for themselves. There are in fact a number of causes of action combined into one and they include in respect of Tongasat's alleged unjust enrichment 'damages or by way of an accounting for that unjust enrichment' and there is also a pleading that Tongasat converted to its own use the first tranche payment for which the remedy sought is also damages.

[40] In submissions to which there was no direct response from Tongasat Dr. Harrison argues that it cannot simply be assumed that the words '....for debt or damages' in section 16 encompasses every civil claim to recover a sum of money including an equitable claim. Furthermore, he notes that the plaintiffs will argue that there should be read into section 16 provision for an extension or postponement of time in circumstances of mistake or fraudulent or other concealment for the avoidance of injustice.

[41] It is the case that on occasion the Courts have chosen to interpret or apply limitation provisions in a manner that avoids injustice (*Invercargill City Council v Hamblin* [1996] 1 NZLR 513 (PC) and the discussion of reasonable discoverability in *Trustees Executors Limited v*

Murray (supra) and in a Tongan context *Motuliki v Namoa* [1990] Tonga LR 61 might arguably be such a case). I am mindful also of the principle advanced by Mr. Edwards that the fact that a claim is weak does not mean that it should be struck out.

[42] In the absence of any relevant authorities on the meaning of section 16 I am not prepared to dispose of the plaintiffs' arguments summarily particularly in circumstances where the limitation defence is clearly not available in my view in defence of the first cause of action in the Part I claims.

[43] I therefore reject Tongasat's submission that the plaintiffs new Part I claims are statute barred.

Lack of standing

[44] At the hearing and related to the submission that the plaintiffs' claims are for breach of contract Mr. Edwards argued that the plaintiffs have no standing to bring their claims because they are not privy to the Exclusive Agency Agreement and other agreements. I have already rejected Tongasat's argument that the plaintiffs claim is for breach of contract and do not have to respond to it further.

[45] In submissions filed after the hearing Mr. Edwards referred me for the first time to section 39(1) of the Public Finance Management Act 2002 which he argues provides that only the Attorney General has the statutory power to bring a civil claim to recover public money improperly disbursed. He also referred me to *Thorne Rural District Council v Bunting* [1972] 1 All ER 439 and *Pyx Granite Co Limited v Ministry of Housing and Local Government and Ors* [1959] 3 All ER 1 in

relation to the limits on the Court's jurisdiction to grant declaratory relief.

[46] I certainly accept that the issue of the plaintiffs' standing to bring this claim is novel and difficult. However, that issue has been already determined by Scott LCJ in his ruling on the defendants' strike out application from which Tongasat did not appeal (of which ruling it appears the Court of Appeal approved). The plaintiffs' new Part I causes of action mirror the causes of action in Part II in respect of which Scott LCJ held the plaintiffs have standing. I do not consider that I am liberty in this Court to now take another course particularly when the arguments advanced for a different result are either the same as those before Scott LCJ or are weak.

[47] As far as section 39(1) is concerned it does not purport to confer an exclusive power on the Attorney General to recover public money. It certainly does not address the situation that arises here where the Attorney General is representing the Kingdom to resist such a claim.

[48] As far as the cases that Mr. Edwards has referred me to are concerned, *Thorne Rural District Council* does not raise any issue that was not considered by Scott LCJ on Tongasat's strike out application. *Pyx Granite* appears to support the plaintiffs' position in so far as the Court held that its jurisdiction to make a declaration can only be ousted by statute by the use of clear words to that effect.

[49] I am therefore satisfied that the Part I claims should not be struck out for a lack of standing.

Further discovery

[50] The plaintiffs seek further and better discovery of the documents identified in the first and second schedule of its amended application of 15 March 2017. Dr Harrison correctly notes that the defendants have not sought to oppose the application on the grounds that the documents listed in the first and second schedules of the application do not exist or that the discovery burden to be imposed is unduly onerous or oppressive.

[51] I therefore take as my starting point that the obligation of a party to give discovery is not limited to documents which would be admissible in evidence nor to those which would prove or disprove any matter in question. A party is required to disclose any document in its custody, possession or power which it is reasonable to suppose contains information which may enable the party applying for discovery either to advance his own case or damage the case of his adversary (*Compagnie Financiere du Pacifique v Peruvian Guano Co* (1882) 11 Q.B.D. 55, 62-63).

[52] The plaintiffs' discovery request relates to two broad categories of documents. The first are documents discovered already by the defendants which are incomplete or are documents that have been referred to in an existing discovered document. It is difficult to see how such a request can be objected to when the defendants have already selected such documents as relevant to an issue in the proceeding.

[53] The second category are documents relevant to the defendants' pleaded defence that the first tranche payment and the second tranche payment although described by the Governments of Tonga and the PRC as aid grant funds were in fact something else altogether. It appears to me that Dr. Harrison must be correct when he submits that it is material to whether the funds were public money or trust money how they were treated by Tongasat in its financial records and for taxation purposes. It is also the case that Tongasat (and the Kingdom) has in its statement of defence put the accounting treatment of the first tranche payment and the second tranche payment in issue as well as the state of accounts as between the Kingdom and Tongasat.

[54] In his written submissions Mr. Edwards acknowledges that the outcome of the plaintiffs' application for leave to file an amended statement of claim will have a significant bearing on Tongasat's discovery obligations. Nevertheless he argues that the plaintiffs' discovery requests are too wide and unnecessary. In a submissions which misunderstands Tongasat's discovery obligations Mr. Edwards submitted that Tongasat did not need to disclose many of the documents the plaintiffs have sought because Tongasat had already provided 'sufficient to refute the claim made by the plaintiffs' or that certain documents are confidential or that they were the documents of another party albeit in Tongasat's possession.

[55] Turning to the second schedule of the plaintiffs' amended application, it lists nine categories of document that the plaintiffs require Tongasat to discover. In respect of these categories I note as follows:

[55.1] The obligation to discover documents in category 1, 5 and 6 is not disputed. Tongasat says that it has already done so but I cannot see the evidence of that and they are to be discovered.

[55.2] The category 2, 3, 4, 7, 8 and 9 documents are clearly relevant to the issue of the status of the first tranche payment or the second tranche payment and are to discovered. The arguments raised by Tongasat to oppose discovery have in the main been dealt with in this ruling. In addition Tongasat argues that the documents are the documents of a third party or are confidential. These are not valid grounds to avoid discovery. Any concerns that Tongasat has about confidentiality can be resolved by applying for appropriate restrictions on inspection.

The outstanding costs

[56] The plaintiffs seek an order that the defendants be debarred from defending this proceeding and in respect of the second defendant only the appointment of a receiver. There are two costs awards that are in issue. The first was made against the defendants in this proceeding in favour of both plainitffs. The other was made in other proceedings (CV 64 of 2014) against the second defendant and was expressed to be payable to the first plaintiff on behalf of all the defendants in that action.

[57] Dr. Harrison has referred me to New Zealand cases where it has been recognised that the Court has an inherent jurisdiction to debar a defendant from defending an action who is in breach of a Court order including an order for the payment of costs (*Ferrier Hodgson and*

Another v Siemer and Another (Unreported High Court Auckland Registry, CIV 2005-404-1808 and *Stephens v Cribb* (1991) 4 PRNZ 337). In *Stephens* the Court of Appeal noted that a debarring order is reserved for extreme circumstances.

[58] Tongasat argues that the Court should not debar it from defending this action because it has a right of contribution or indemnity from the Kingdom. This seems to me to be a wholly irrelevant consideration which cannot possibly deprive the plaintiffs of their right to payment.

[59] In an affidavit of Mr. Panuve he says that Tongasat is awaiting costs to be awarded to it against the second plaintiff in other proceedings. Again I do not see how an unresolved claim for costs can deprive the plaintiffs to their undoubted entitlement to immediate payment. This is even more so when Tongasat's claim for costs is against the second plaintiff only and so does nothing to impeach the first plaintiff's entitlement.

[60] However, as noted above an order debarring a defendant should only be made in extreme circumstances and the circumstances of this case bear little resemblance to those that arose in *Seimer.*

[61] I am also not satisfied that it would be appropriate for me to debar the defendants in respect of an award of costs made in other proceedings.

[62] I note also that the costs awarded to the plaintiffs in this proceeding are against both defendants and there is a procedure for recovery of what is owed from the Kingdom under section 9 of the Crown Proceedings Act. I consider this should be utilised before resorting to other means of enforcement.

[63] That said the position adopted by Tongasat is unacceptable. It has provided no explanation for its long standing failure to pay the costs awarded and there is some force in Dr. Harrison's submission that its disobedience to pay costs is no different from any other failure to comply with a Court order and should be regarded, in the absence of explanation, as a contempt.

[64] I am not presently going to make the orders that the plaintiffs seek on this aspect of their application but will adjourn the matter to be called again on 23 June 2017 so that the plaintiffs may explore obtaining payment under section 9 of the Crown Proceedings Act. If the costs are not paid by that date I will reconsider the plaintiffs' application.

Result

[65] The orders that I make are the following.

[66] The plaintiffs are granted leave to file (*nunc pro tunc*) their amended statement of claim in this proceeding in terms of the first amended statement of claim already filed and served.

[67] The Kingdom shall make an affidavit stating whether it has in its possession, custody or power any documents related to issues arising between the parties to this proceeding as identified in the first amended statement of claim and in particular (without limitation) any documents specified or described in the first schedule of the plaintiffs' amended application of 15 March 2017.

[68] The Kingdom must comply with the order for discovery in paragraph 67 within 28 days by filing and serving a further and better list of

documents verified by affidavit in accordance with Order 18 Rules 2 and 3 of the Supreme Court Rules 2007.

[69] Tongasat shall make an affidavit stating whether it has in its possession, custody or power any documents related to issues arising between the parties to this proceeding as identified in the first amended statement of claim and in particular (without limitation) any documents specified or described in the second schedule of the plaintiffs amended application of 15 March 2017.

[70] Tongasat must comply with the order for discovery in paragraph 69 within 28 days by filing and serving a further and better list of documents verified by affidavit in accordance with Order 18 Rules 2 and 3 of the Supreme Court Rules 2007.

[71] The plaintiffs' further applications in paras 6-9 of its amended application of 15 March 2017 are adjourned to be called again for mention on Friday, 23 June 2017 for further consideration.

[72] In relation to costs the plaintiffs have been largely successful and they are entitled to costs.

[73] However, I invite submission from Counsel prior to 23 June 2017 as to whether such costs should be apportioned as between the Kingdom (which did not oppose the application) and Tongasat and if so on what basis. I will deal with the issue of costs when the case is next called for mention.

IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY CV 48 of 2014

O.G. Paulsen
LORD CHIEF JUSTICE

NUKU'ALOFA: 19 May 2017.