

Scan, file, Upload

25/09/18

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

CV 48 of 2014

**BETWEEN: PUBLIC SERVICE ASSOCIATION INCOPORATED**

- **First Plaintiff**

**SAMUELA 'AKILISI POHIVA**

- **Second Plaintiff**

**AND: THE KINGDOM OF TONGA**

- **First Defendant**

**FFRIENDLY ISLANDS SATELLITE COMMUNICATIONS  
LIMITED (trading as TONGASAT)**

- **Second Defendant**

**BEFORE THE HONOURABLE CHIEF JUSTICE PAULSEN**

**JUDGMENT GRANTING DECLARATORY RELIEF**

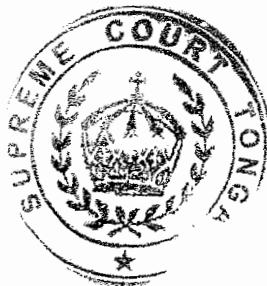
**THIS PROCEEDING** was heard on 12 - 22 and 24 – 25 June 2018 at Nuku'alofa before the Honourable Lord Chief Justice Paulsen, who, having heard from Dr R E Harrison QC, SC, Counsel for the plaintiffs, Mr 'A. Kefu SC, Counsel for the first defendant, and Mr W Edwards Jr, Counsel for the second defendant, and having heard the evidence adduced, hereby gives judgment declaring as follows:

1. The first tranche payment of USD\$24.45 million in aid grant funds received by the first defendant (the Kingdom) from the People's Republic of China on 4 September 2008 (the first tranche payment) was a "grant" and accordingly "public money" within the meaning of the Public Finance Management Act ("PFMA");
2. The payment of USD\$20,985,667 of the first tranche payment to or for the benefit of the second defendant (Tongasat) was expended in breach of section 9 of the PFMA and accordingly unlawful and invalid;

rec'd 25/09/18  
tir

3. Furthermore, to the extent that the first tranche payment was expended to satisfy pre-existing liabilities of Tongasat that expenditure was in breach of section 30 of the PFMA and accordingly unlawful and invalid;
4. The second tranche payment of USD\$25.45 million in aid grant funds received by the Kingdom from the People's Republic of China on 9 June 2011 (the second tranche payment) was a "grant" and accordingly "public money" within the meaning of the PFMA;
5. The payment of the second tranche payment in its entirety to or for the benefit of Tongasat was expended in breach of section 9 of the PFMA and accordingly unlawful and invalid;
6. Furthermore, to the extent that the second tranche payment was expended to satisfy pre-existing liabilities of Tongasat that expenditure was in breach of section 30 of the PFMA and accordingly unlawful and invalid;
7. The plaintiffs lack standing to pursue their restitutionary private law claims against Tongasat and those claims are dismissed;
8. The plaintiffs are entitled to the costs of the action against both defendants, with costs to be fixed by the Registrar if not agreed; and
9. Tongasat's application for an indemnity from the Kingdom for costs awarded to the plaintiffs and its own costs of defending this action are reserved.

**DATED: 17 August 2018.**



  
O.G. Paulsen  
**LORD CHIEF JUSTICE**

**IN THE SUPREME COURT OF TONGA**

**CIVIL JURISDICTION**

**NUKU'ALOFA REGISTRY**

**CV 48 of 2014**

---

**BETWEEN: PUBLIC SERVICE ASSOCIATION INCORPORATED**

- **First Plaintiff**

**SAMUELA 'AKILISI POHIVA**

- **Second Plaintiff**

**AND: THE KINGDOM OF TONGA**

- **First Defendant**

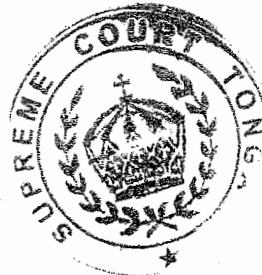
**FFRIENDLY ISLANDS SATELLITE COMMUNICATIONS  
LIMITED (trading as TONGASAT)**

- **Second Defendant**

**MINUTE OF THE LORD CHIEF JUSTICE**

1. In my 'Judgment as to Form of Declarations and Costs' I sought submissions from the Kingdom on Tongasat's application for costs against the Kingdom (including the indemnity for costs awarded to the plaintiffs). I have received submissions from the Kingdom and also submissions on behalf of the plaintiffs who submit that they have an interest in the outcome of the application.
2. The Kingdom and the plaintiffs have raised matters in opposition to Tongasat's application that may require the Court to make findings on issues that it was not necessary to address in the main judgment concerning Tongasat's conduct, and in particular the alleged breaches of fiduciary duties.
3. In the circumstances Tongasat is entitled to consider its position and to advance any further submissions strictly in reply. I will accept further submissions from Tongasat until 8 October 2018.

**DATED: 24 September 2018.**



A handwritten signature in black ink, appearing to read "O.G. Paulsen".

**O.G. Paulsen  
LORD CHIEF JUSTICE**