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

CV 22 of 2019

BETWEEN : SIONE MA'AKE KAUFUSI
- Plaintiff

AND : 1. MO'UNGA TU'ALAU
2. KELASI TU'ALAU
- Defendants

BEFORE HON. JUSTICE NIU

Counsel : Mr Viliami Mo'ale for plaintiff.

Hearing : 4 October 2019 on assessment of damages.

Further affidavit : 17 October 2019.

Ruling : 30 October 2019.

RULING ON ASSESSMENT OF DAMAGES

The facts

[1] Judgment in default of defence was issued on 8 July 2019 in favour of the plaintiff, for damages to be assessed, and for costs. The plaintiff was to file and serve a bill of costs in accordance with Order 45 rule 2.

[2] The claim of the plaintiff against the husband and wife defendants is in respect of crops of his which were destroyed by the defendants by slashing them with a tractor drawn slasher and by bulldozing them with a front end loader a few days later. The crops were completely destroyed and could not be salvaged.

[3] An officer from the Ministry of Agriculture, a Mr Siosuia Piliu, 47 years of age, with 29 years of experience in assessing damages of crops gave evidence that he inspected and counted the crops slashed (before they were subsequently destroyed), and at the hearing he valued them as follows:

(a) 7 May 2019

(i) 174 Manioke plants at \$6.50 per plant	\$1,131.00
(ii) 98 Kumala plants at \$5.00 per plant	\$490.00
(iii) 50 Talo Tonga plants at \$2.00 per plant	<u>\$50.00</u>
Total	<u>\$1,721.00</u>

(b) 13 May 2019

(i) 856 Manioke plants at \$6.50 per plant	\$5,568.00
(ii) 129 Kumala plants at \$5.00 per plant	\$645.00
(iii) 67 Talo Tonga plants at \$2.00 per plant	<u>\$134.00</u>
Total	<u>\$6,343.00</u>

(c) Total of two lots of crops **\$8,064.00**

[4] The valuation made by the officer, which I accept, is based on the current marketable value of the crops at the local market at Nuku'alofa. I accept the total value of \$8,064.00 for the crops destroyed by the defendants.

[5] The officer also valued the value of 2 coconut trees, which were already fully bearing fruits, which were also cut down by the defendants with a chainsaw, in the sum of \$5,720 per tree, which sum has also been claimed by the plaintiff in his present claim against the defendants in addition to his claim for the abovestated crops. The officer estimated that the 2 trees were about 25 years old and they had another 30 years of productive life which have now been lost by their destruction.

He also included in the valuation the value of timber from the logs if allowed to grow to their full height. He gave a total value of \$11,440.00 for the 2 trees.

- [6] The coconut trees were not planted by the plaintiff. They were planted by one Vili Heti Kaufusi who was the lawful holder of the tax allotment before he died in 1989. On his death, the allotment was held by his widow until 2013 when the widow surrendered it to the estateholder, Noble Ma'afu. The widow subsequently died in 2015. The plaintiff, who is not an heir to the allotment, but is a great nephew of Vili Heti, applied to the estateholder for the tax allotment but the estateholder refused to consent to the grant of the allotment to him. Nevertheless, the plaintiff entered upon the allotment and cultivated his crops thereon. Those are the crops which have been destroyed by the defendants and which are subject of this claim.

The law

- [7] The crops on the land are, or rather were, the properties of the plaintiff, even though he was not and is not the lawful holder of the land upon which they were grown. This is because he planted and maintained them to maturity (when they were destroyed by the defendants), without objection by the estateholder who lawfully held, and now holds, the land.
- [8] No defences were filed by the defendants to the plaintiff's claim against them and so I cannot speculate as to why they destroyed the plaintiff's crops, or as to any justification that they might have had for doing so.
- [9] However, I cannot accept that the loss of the 2 coconut trees is a loss of the plaintiff, although they were cut down by the defendants as well. This is because it is a loss only to the owner of the land, not to the plaintiff because he is not the owner of the land.
- [10] The plaintiff has not satisfied me that he has a legal interest in this land. He has referred me to his claim no. LA 21/2018 in the Land Court in which he is claiming against the estateholder and the Minister of Lands that as he is blood related to Vili Heti Kaufusi, he ought to be granted the land as his tax allotment. That is a long

way from establishing that at the time these coconuts trees were cut down he was the lawful holder of the allotment. Accordingly, I cannot award any damage to him in respect of the loss of the 2 coconut trees. This is because a coconut tree is a source of material for construction of fale, the Tongan houses. It provides the posts, beams, rafters and spokes of the house, and the fibre for tying the joints of the rafters to the posts and of the spokes to the rafters and of the thatched coconut leaves to the spokes as the roof and as the walls. The mats (takapau) for the floor are also made from the young leaves of the coconut trees. In English law, trees which provide timber for houses are called timber trees and are regarded as the property of the owner of the land on which they grow. Coconut trees in Tonga can properly be said to be timber trees and, as Tongan has no legislation that says otherwise, the English common law must be applied in Tonga as the law with regard to ownership of coconut trees.

Conclusion

[11] Accordingly, I cannot award any damage to the plaintiff in respect of the 2 coconut trees, but I would award damages for his crops because they were lawfully his property. I make the following orders:

- a) The defendants are jointly and severally liable to the plaintiff for damages in the sum of \$8,064.
- b) The defendants are also jointly and severally liable to the plaintiff for the costs of these proceedings, to be taxed if not agreed.

NUKU'ALOFA: 30 October 2019.




Niu J

JUDGE