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

CV 74 of 2018

BETWEEN : TEVITA MALAKAI TAHI - *Plaintiff*

AND : SIONE MATANGI TA'E'ILOA HAUSIA - *Defendant*

BEFORE JUSTICE NIU

Counsel: Mr. Viliami Mo'ale for plaintiff
Mr. Sunia Fili for defendant

Hearing : 23 – 24 September, 2019 on quantum
Submissions: by defendant 8 October 2019
by plaintiff 23 October 2019
Ruling : 29th October, 2019

RULING ON QUANTUM

1. This trial was held in 'Ohonua, 'Eua, and at the commencement, both counsel asked for a short adjournment to enable them and the parties to talk with a view to settling the dispute or the issues to be tried. After the short adjournment, counsel informed me that the parties were agreed that liability of the defendant was admitted but that the quantum of the claim for damages was disputed and that the evidence to be called would only be in respect of the question of the amount of damages to be paid by the defendant.
2. Accordingly, the plaintiff did not give evidence and he only called the crop valuation officer of the Ministry of Agriculture, Mr. Visiesio Lemeki, 43 years of age, with 5 1/2 years of experience there and he gave evidence. He said that he and another officer, a Mr. Kaniseti Fifita, and a Japanese volunteer worker working with their extension

division and the plaintiff, went to the plantation on 4 April 2018 and carried out the valuation of the crops.

3. He said that the crops were in two separate areas, and that they used a GPS instrument to locate the exact location and size of the area of each area of crops. In the first area, which was found to be 0.6 of an acre in area, he said that he and the Tongan officer counted each type of the crops and found there were:

- (a) 503 kava plants which were about 6 months old;
- (b) 45 kape (giant taros) plants, also about 6 months old;
- (c) 300 vanilla plants growing on fig tree branches, about 4 months old.

He said that the state of weediness of the plantation was weedy (vaoa) and some kava plants had died as a result.

4. He said that at the market price of the plants at the time he valued the plants that they counted in the first area as follows:

| | |
|---|---------------------------|
| (a) 503 kava plants at \$14.19 per plant | \$7,137.57 |
| (b) 45 kape plants at \$7.57 per plant | \$ 340.65 |
| (c) 300 vanilla plants at \$11.91 per plant | <u>\$3,573.00</u> |
| Total | <u>\$11,051.22</u> |

5. He said that the second area was found to be also 0.6 acre and that they counted 354 kava plants there which they also estimated to be about 6 months old. He said that he valued them on the same basis to be:

| | |
|--------------------------------------|------------|
| 354 kava plants at \$14.19 per plant | \$5,023.26 |
|--------------------------------------|------------|

6. Accordingly he evaluated all the crops in the two areas at a total value of \$16,074.48.
7. Mr. Lemeki was cross-examined at length by Mr. Fili that they did not count the plants individually but that they only estimated the number of the plants, but Mr. Lemeki maintained that he and the other officer, Kaniseti Fifita, each took a row and counted every plant that was still alive and growing. He said that there were plants which had died

as a result of the weeds smothering them, and that they did not include them in the total number of plants upon which they arrived.

8. I have to say that if those plants have died because they have been smothered by the weeds, and the reason for the overgrowth of weeds was due to neglect by the defendant to weed the plantation as he should have done, the responsibility for which was with the defendant since December 2017, (when he terminated the right of plaintiff to enter and main the crops) then the loss of the plants which have died can be attributed to the defendant as well. But the plaintiff has not claimed the value of the dead plants in his claim. He has only claimed the value of the live plants which the officers counted.

9. In the main, Mr. Fili was putting to Mr. Lemeki that they did not count every plant and that they simply made an estimate of the number of the plants. He put to Mr. Lemeki that that was what they did because the defendant stated that he had come to the areas of the crops soon after they, the officers and the plaintiff had left, and looked at the state of the crops and weeds and found no sign of the weeds having been pushed apart or trampled if such counting had been carried out.

10. Mr. Hausia, the defendant gave evidence and this is what he stated in his brief of evidence, paragraph 19:

“...On the day of the evaluation of the crops the plaintiff and the agriculture officer conveyed to me that they would go to my tax allotment and evaluate the crops. After 2 hours from that I went to my tax allotment at 11:00am to see what they had done, and I saw that they did not reach the side where the kava was planted because it was covered in bush and at that time the grass was dewey and it did not show that any one had stood on it. I then knew that they had only stood under the shade of the ifi tree there and carried out their evaluation.”

11. He did not elaborate that in his evidence in chief but in cross-examination he said he was asked to go with the officers and the plaintiff but that he said that they could go on their own because he was busy with a church matter that morning. He said that in his estimate as at that time, there would only have been 80 kava plants left, but that he did not go to

the officer to see how many plants they had evaluated. He said that he was given the officer's valuation on the 4 April 2018, the date of the valuation but that he did not bother to dispute the number of plants shown in the evaluation.

12. I believe the evidence of the officer, Mr. Visesio Lemeki and I accept his valuation. He was particular about what they did and how they did it. If the defendant was correct and that the number of plants shown in the evaluation was wrong, he would have immediately told the plaintiff or the officer that it was wrong, but he did not. He has not denied or disputed it until the plaintiff has brought this claim. He did not even count the plants himself.
13. Furthermore, in his evidence in chief he said that he did not agree with the valuation of \$16,078.18 because of the state of overgrowth of the weeds over the plants, and not because there were not that many plants. But I have already found that the state of overgrowth of weeds over the plants, and loss of plants themselves as a result was due to negligence of the defendant, in failing to weed and maintain the crops properly.
14. The wife of the defendant, Kalolaine Hausia, gave evidence and another man, Mr. Silo Feleti, also gave evidence. The wife's evidence was in the main about liability but that was already admitted. Mr. Feleti's evidence was that he had been asked by the defendant to go into the two areas of the crops – amongst the now tall and higher than him bush – and try and count the number of crops. That evidence confirmed the evidence of both the defendant and of his wife, that they had not weeded the crops ever since they had possession of them since December 2017. Mr. Feleti was only asked on the first day of this trial and he gave his evidence on the second day. He said that the weeds were higher than him. He said that in the first area of the crops, he found only 72 kava plants still surviving, and in the second area, he found only 6 kava plants still growing, a total of 78 kava plants. As to the vanilla, he said he only found 5 plants in the first area and none on the second area. He said, given the state of overgrowth of weeds, he believed that if there had been kava and vanilla plants planted there nearly 2 years ago they would have died because of the overgrowth of weeds.

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15. Having therefore heard and considered the evidence given, I am satisfied that the valuation given by the officer, Mr. Visessio Lemeki, is correct. I find that the value of the crops of the plaintiff which were taken over by the defendant in December 2017, were at least worth, by 4 April 2018, \$16,074.18.
16. Accordingly, I make the following orders:
- (a) There be judgement for the plaintiff against the defendant in the sum of \$16,074.18
 - (b) The defendant shall also pay the costs of the plaintiff in these proceedings, which costs shall be taxed by the Registrar if not agreed.

NUKU'AIOFA: 29 OCTOBER 2019



A handwritten signature in black ink, appearing to read "L. M. Niu".

L. M. Niu
JUDGE