

Solicitor-General  
22/05/20  
Slan + Upman  
& Kila .

**IN THE SUPREME COURT OF TONGA**

**CIVIL JURISDICTION**

**NUKU'ALOFA REGISTRY**

**CV 2 of 2019**

**BETWEEN** : **TEVITA TAULAFO**  
- Plaintiff

**AND** : **SIONE TA'E'ILOA MAFI aka SIONE SELU**  
- First Defendant

**AND** : **SIONE MOALA TUKIPILI**  
- Second Defendant

**BEFORE HON. JUSTICE NIU**

**Counsel** : **Mr Hiva Tatila for plaintiff (judgment creditor)**  
**Mr Sione Mafi, first defendant (judgment debtor)**  
**Mr Sione Tukipili, second defendant (judgment debtor)**  
**Mrs Vasiti Mafi, first interpleader**  
**Ms 'Emeline Mafi, second interpleader**  
**Mr Pea Lehai Lo'ai Fatafahi, third interpleader**  
**Mr Paula Fe'aomoeata, bailiff**

**Hearing** : **8 May 2020**

**Ruling** : **21 May 2020**

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## **RULING**

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[1] Judgment in default of defence was entered against the defendants on 15 April 2019 in the sum of \$107,250.00 jointly and severally. Application to set aside that judgment was made by the first defendant but he failed to satisfy me that he had a good reason for failing to file his defence in time or that he

had an arguable defence to the plaintiff's claim and I dismissed his application on 24 June 2019. No appeal was taken by him against that ruling.

- [2] The defendants did not pay the judgment debt and a writ of distress was issued against them on 19 November 2019. In pursuance of that writ, the bailiff specially seized properties at the home of the first defendant at Pahu, Kolofo'ou, and at the home of the second defendant at Halaleva, Kolofo'ou, on 3 February 2020.
- [3] On 7 February 2020, the bailiff received a claim by the first interpleader, Vasiti Mafi, wife of the first defendant, who lives with the first defendant at the home at Pahu, that all the properties specially seized by the bailiff at Pahu were her own personal properties except for the motor vehicle, L10427, which she said was the property of their daughter, 'Emeline Mafi, the second interpleader. On 19 April 2020, the second interpleader, sent a letter confirming her claim to the bailiff. On 5 May 2020, the claim of the third interpleader, Pea Fatafehi, was received by the Court, claiming that he is the owner of the motor vehicle, C23576, which was specially seized by the bailiff at Halaleva.

#### **Claim of the first interpleader, Vasiti Mafi**

- [4] Vasiti Mafi is the lawful wife of the first defendant (judgment debtor). She gave evidence that she and the first defendant lived at 'Eua after they were married. The first defendant has a town allotment at 'Ohonua where they built their dwellinghouse. It was not disputed that the first defendant was and is a prominent commercial farmer at 'Eua, growing and selling crops as well as kava plants and mulbury plants.
- [5] Vasiti says that they have 6 children, 5 of whom are living and working overseas with 2 in Australia and 3 in New Zealand. The only one in Tonga is the youngest son who is 21 years old this year.
- [6] She said that in 2003 they acquired a piece of land in Kolofo'ou, Tongatapu and they decided that it be held on lease until their son in Tonga would attain 16 years so that he could apply to hold it as his town allotment. The lease was accordingly registered in Vasiti's name as a residential lease for 50 years on 6 March 2003 at an annual rent of \$50.00. She said that they had paid NZ\$8,000 to acquire that land, and that the children overseas had paid for it.
- [7] She said that in 2005, while the youngest daughter, 'Emeline, was still in Tonga, the children overseas shipped the motor vehicle to Tonga as a present to her, and the vehicle was registered under her name in 2005, and was shipped to 'Eua where they were living.

- [8] She said that in 2006, they got permanent residence in New Zealand and they went there and worked and in 2007, they built a dwellinghouse on the leased land at Kolofou and in 2009 they built a second dwellinghouse on the leased land. She said that in 2016 to 2017, they built a third dwellinghouse on the leased land, which house is much bigger than the other two. She said that they live in that big house up to now.
- [9] She also said they are presently building another dwellinghouse at Tokomololo into which they will move so that the big house on the leased land would be rented out like the other two houses.
- [10] She said that all three houses were built, and furnished, (with the properties now seized by the bailiff) by her own efforts and with the financial help of their children, without any loan from any bank or person.
- [11] She said that she decided to register her apartment business in 2009, and so she had it registered on 26 September 2009 up to now and she operates it as "Vasiti Mafi Apartment".
- [12] She says they still keep the dwellinghouse at 'Eua and the first defendant uses it when he goes there to attend to their farms.
- [13] She said that the money which the first defendant made from their farms have been what they have used for their living expenses. She also said they had received no money at all from the kava of the plaintiff in respect of which the judgment against him has been made.
- [14] Accordingly, Vasiti claims that the seized properties in the 3 houses on the leased land are all her own personal property and she prays that they be released from that seizure. In other words, she claims sole ownership of all the seized properties in the 3 houses, except the motor vehicle.

### **Ownership**

- [15] Ownership is defined in *Osborn's Concise Law Dictionary* (7<sup>th</sup> edition) as:

"The right to the exclusive enjoyment of a thing (Austin). Strictly it denotes the relation between a person and any right that is vested in him (Salmond). Ownership is absolute or restricted. Absolute ownership involves the right of free as well as exclusive enjoyment including the right of using, altering, disposing of or destroying the thing owned..."

- [16] That definition aptly applies to the circumstances and the people in Tonga, where children go overseas and work and send money and ship properties

home to Tonga to their parents with which the parents purchase properties such as motor vehicles and build homes for themselves. Although the monies for those things were earned and owned by the children, there is no question as to the ownership of the monies received and properties purchased with those monies. They are owned exclusively by the parents, both parents, jointly, because they have exclusive enjoyment thereof including the right of using, altering, disposing of or even destroying the same.

- [17] In the present case all the properties which have been acquired by the first defendant and his wife from the farming of the first defendant and from the business of the wife have been exclusively enjoyed by both of them. And the same goes to any money or property which any of their children has given to them. Such money and property have been exclusively enjoyed by both of them.
- [18] When the NZ\$8,000 were paid by the children to them to pay for acquiring the land at Kolofo'ou, that sum was enjoyed exclusively by both of them by paying it to the landowner to relinquish it for their joint enjoyment. They decided that the land be put aside for their youngest son, and that in the meantime, the wife was to hold it as lease for safety sake. They accordingly agreed to have it leased in the wife's name, not for her to own it exclusively as hers but only until the son was 16. So the wife accordingly held their land by way of lease for that purpose.
- [19] Some 4 years later, in 2007, they decided to build a dwellinghouse on the land for rent out to tenants and they did, and they collected and utilised the rent as their joint income. They did that just as they utilised the farming income from the first defendant's work at the farms at 'Eua.
- [20] In 2009, they were able to build the second house, again in the same way and by use of their joint properties and joint incomes, and this time, they decided to register the rental business as a business because it would have advantages of deduction of business expenses and no doubt paying less income tax. But it is clear that nothing changed in respect of ownership because the first defendant's farming income was still being utilised for their living expenses and, no doubt, constructions and other expenses as well.
- [21] In 2016-2017 when the third and bigger house was built, the same thing happened. The construction and furnishing of that house were done the same way. Both the first defendant and his wife had the exclusive enjoyment of the same by having it built, furnished and by occupying the same as their second house, the 'Ohonua house being their first.

- [22] The Courts have held in cases of disputes between spouses and between spouses and third parties that properties acquired by a married couple during their marriage were jointly owned by the spouses despite the differences in monetary contributions of each spouse towards those properties, because of the value of the unpaid work of a spouse who earned no income. (Refer *Ualesi Case* (1979) Tonga LR 83 and '*Alatini Case* [1990] Tonga LR 1).
- [23] I therefore find on the evidence and on the law that all the contents of all 3 houses which were specially seized by the Bailiff are jointly owned by the first defendant and the wife, Vasiti Mafi, and not exclusively by Vasiti Mafi as she claims.
- [24] The Courts have also held that properties jointly owned by a married couple could be seized and sold and after deducting the costs of the sale, pay half the proceeds to the spouse who is not indebted, and pay the other half to the judgment creditor in reduction of the judgment debt: '*Alatini Case* [1990] Tonga LR 1.
- [25] Accordingly the same should apply in the present case.

**Claim of the second interpleader, 'Emeline Mafi**

- [26] This claim is only in respect of the vehicle, no. L10427, which was specially seized on the leased land at the same time. She claims ownership of the vehicle because she was registered as owner thereof on 24 November 2005, and that registration has been maintained up to now.
- [27] However, the Traffic Act makes no provision that the person registered as owner of a motor vehicle is conclusively the owner of the vehicle. The Court in '*Alatini's Case* held that although the van in that case was registered in Mr Muti as owner, it held that it was jointly owned by Mr Muti and his wife Mrs Muti, who had also contributed to payments of the price of the van.
- [28] Accordingly, in the present case, the registration of the van in 'Emeline as owner is not conclusive. As I have stated above ownership is the right to the exclusive enjoyment of a thing. Other than perhaps for one year (2005) that 'Emeline was in Tonga, the vehicle has exclusively been used and possessed and enjoyed jointly by the first defendant and his wife, Vasiti instead.
- [29] In the present case, 'Emeline never had any use or enjoyment of the vehicle in all the years from 2005 up to now – 15 years. It was wholly used and enjoyed jointly by the first defendant and his wife instead.
- [30] Accordingly, I find that it is the joint property of the first defendant and Vasiti Mafi and that it be sold and costs of sale be deducted before proceeds is

halved and one half is paid to Vasiti Mafi and the other half paid to judgment creditor.

### **Claim of the third interpleader, Pea Fatafehi**

- [31] The third interpleader, Pea Fatafehi, claims that the vehicle, C23576, which was in the possession of the second judgment debtor, Sione Tukipili, and which was specially seized on 3 February 2020 from his home at Halaleva is his vehicle. He has made that claim by letter to the Court dated 4 May 2020, in pursuance of direction I made for him to do that, and for him to attend and be heard with his documents and witnesses on 8 May 2020.
- [32] However he did not turn up for the hearing and he sent no message to explain his absence up to now. He therefore did not give evidence and could not be cross-examined as to his claim.
- [33] In his letter he says the motor vehicle is his and he attached his certificate of registration as owner and also the licence of the vehicle to be on the road. He says that the vehicle was given to the second judgment debtor to use to transport the debtor's father for medical treatment and for the debtor and his family to use.
- [34] It is not known how long the vehicle has been in the debtor's possession and control and what relationship there is or has been between him and the third interpleader. There is no mention of any rent or obligation or liability or responsibility for the debtor to bear in respect of his free use and possession of the vehicle. That is equally consistent with the debtor having purchased the vehicle from Fatafehi but having left the registration of the transfer of ownership thereof in Fatafehi's name to avoid distress thereof from the debtor.
- [35] In any event, I find that the vehicle has been in the exclusive enjoyment and use and responsibility of the second judgment debtor as owner thereof, and I find that despite its registration in Pea Fatafehi as owner, the second judgment debtor is the owner of it.

### **Orders**

- [36] Accordingly, I order that, unless the judgment debt owed to the judgment creditor is paid in full within 14 days from the date of these orders, the bailiff shall proceed to publicise and to sell all the properties which he has specially seized, by public auction, and after deducting the costs of the sale therefrom, he shall pay half of the balance of the proceeds to the judgment creditor and the other half to the first interpleader, Vasiti Mafi, and after deducting the costs of sale of the vehicle C23576, pay the whole of the balance of the

proceeds of sale of the vehicle to the judgment creditor. Upon completion thereof, he shall file in this Court a statement of all the prices for which each item has been sold and the particulars of all costs of the sale and the balance of the proceeds and the payments made to the judgment creditor and to Vasiti Mafi.

**Nuku'alofa: 21 May 2020**



A handwritten signature in black ink, appearing to be "Niu J", is written over the seal and extends to the right.

Niu J

**J U D G E**