

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

Solicitor General
Scan, upload +
email, file
R
CV 57 of 2018 03/02/21

BETWEEN:

WILLIAM CLIVE EDWARDS

Plaintiff

-and-

[1] PUBLIC SERVICE ASSOCIATION
[2] MELE TEUSIVI 'AMANAKI

Defendants

Whether the judge or the jury is to determine the quantum of any awards of damages

RULING

BEFORE: LORD CHIEF JUSTICE WHITTEN
To: Mr W.C. Edwards SC
Mrs M. 'Amanaki
Date: 2 February 2021

1. In this action, Mr Edwards claims damages from the defendants for defamation and Mrs Amanaki has brought a counterclaim for damages against Mr Edwards for defamation. The claims arise out of an email exchange between the two which was copied to numerous others. The Defendants elected trial by jury.
2. At the pre-trial conference on 22 January 2021, among the various issues that were discussed with the parties, Mr Edwards submitted that it was for the judge to determine the quantum of any awards of damages whereas Mrs Amanaki contended that such determination is a matter for the jury. Neither were then able to identify any authority or legislative basis for their respective positions.
3. At paragraph 8 of the directions made that day, the court directed that:

“The parties are to file submissions on the issue of whether the judge or the jury is to determine the quantum of any damages to be awarded by 29 January 2021. The court will then determine that issue on the papers.”
4. On 28 January 2021, Mr Edwards filed a submission on the issue. Mrs Amanaki has not.

03 FEB 2021
JTB

5. In his submission, Mr Edwards referred to s.13 of the *Supreme Court Act* and clause 11 of the Constitution.
6. Section 13 provides, relevantly, that in a civil action tried before a jury, after the evidence has been heard and the judge sums up the evidence and explains the law to the jury that bears upon the case, the jury shall then consider the evidence and deliver their verdict.
7. However, clause 11 of the Constitution provides:

11 Procedure on indictment

No one shall be tried or summoned to appear before any court or punished for failing to appear unless he have first received a written indictment (except in cases of impeachment or for offences within the jurisdiction of the magistrate or for contempt of court while the court is sitting). Such written indictment shall clearly state the offence charged against him and the grounds for the charge. And at his trial the witnesses against him shall be brought face to face with him (except according to law) and he shall hear their evidence and shall be allowed to question them and to bring forward any witness of his own and to make his own statement regarding the charge preferred against him. But whoever shall be indicted for any offence if he shall so elect shall be tried by jury and this law shall never be repealed. And *all claims for large amounts shall be decided by a jury* and the Legislative Assembly shall determine what shall be the amount of claim that may be decided without a jury.

[Emphasis added]

8. On that basis, Mr Edwards reversed his original position and submitted that any award of damages is to be determined by the jury and not by the judge. That concession may well explain Mrs Amanaki's failure to file submissions on the question.
9. The last sentence of clause 11 is a curiosity. As denoted by its heading, clause 11 is primarily concerned with criminal proceedings by way of indictment. Criminal proceedings do not involve "claims for large amounts". Therefore, the last sentence is inapt to criminal proceedings and can only apply to civil proceedings such as the instant.
10. For the prescription within clause 11 to apply, one must be able to define what constitutes a "large amount" and/or whether the Legislative Assembly has determined the opposite, i.e. the amount of a claim that may be decided without a jury. Mr Edwards' submission did not address either.

11. Arguably, s.59 of the *Magistrates Court Act* sheds some light on the issue. Subsection 1 provides that that Court has jurisdiction to hear and determine civil actions in which the amount claimed does not exceed \$10,000. Subsection 2 provides that civil actions shall be tried in the Magistrates Court without a jury. That suggests that Parliament may have considered that any civil claim over \$10,000, which must be heard in the Supreme Court, and where there is a statutory right to trial by jury, constitutes a "large amount". I am not aware of, nor was I referred to, any other statutory pronouncement which bears upon that discrete question.
12. The only problem with that analysis is that there is no legislative prohibition on claims below \$10,000 being litigated in the Supreme Court. However, s.4(2) of the *Supreme Court Act* clearly suggests that there may well be costs ramifications for doing so.
13. Ultimately, in my view, the most satisfactory answer to this issue is to be found within clause 100 of the Constitution, which provides:

100 Form of verdict

It is the duty of the jury in criminal cases to pronounce whether the person accused is guilty or not guilty according to the evidence given before the Court. In civil cases *the jury shall give judgment for payment or compensation* as the case may be and according to the merits of the case.

[Emphasis added]

14. In the instant case, both the claim and counterclaim seek damages. Damages are, by definition, intended to be compensatory. Accordingly, as clause 100 requires a jury to give judgement for compensation, it is for the jury to determine the quantum of any awards of damages in this case.

NUKU'ALOFA
2 February 2021



M. H. Whitten QC
LORD CHIEF JUSTICE