

The Facts

- [2] The plaintiff built the house with the permission of the landholder. The house was built around 1984 and the plaintiff lived there until 1989 when he moved overseas and he rented out his house.
- [3] At some stage the defendants, who are the plaintiff's sister and niece, moved into the house and they have lived there since. It is not clear when they moved into the house but it appears to have been between 2000 and 2004. The plaintiff says that they were to pay rent whereas the defendants say that they were not to pay rent and that the plaintiff allowed them to occupy the house because he had no intention of ever returning to Tonga and because of their close family ties.
- [4] The plaintiff says that in 2008, while he was still living and working overseas, he telephoned the defendants and asked them to move out of the house but they terminated the call. He says that it was not until 2013 that he could get leave from his employment to come to Tonga and that he went to see the defendants and told them that they must vacate the house by January 2015. The defendants deny that they were told to leave the house in either 2008 or 2013.
- [5] The parties do agree that in February 2015, when the plaintiff was again in Tonga, he did ask the defendants to move out of the house. The defendants sought legal advice from Mr. Fakahua who wrote to the plaintiff on 12 February 2015 asking for 6 months for the defendants to vacate. Following receipt of that letter the plaintiff obtained his own legal advice and these proceedings are the result.

The application for eviction

- [6] The affidavit of the plaintiff in support of the application for eviction says that an urgent order is necessary as the house needs to be renovated, the defendants are not paying rent and that if no order is made damage will be done to the house by the defendants occupation and use without any repair or renovation.
- [7] In his oral submissions Mr. Pouono put forward other matters. He submitted that it is cyclone season and the house may be demolished by a cyclone given its state of disrepair. He also submitted that the plaintiff and his immediate family are moving back to Tonga and they have nowhere to live. It appears this is the reason for the need to renovate. As these additional matters were not the subject of any affidavit evidence I disregard them but had I taken them account it would have made no difference to the result of this application.
- [8] For their part the defendants say that they have maintained the house in good condition, that the plaintiff's demand that they leave the house is unreasonable, that they are entitled to payment of T\$40,000 for maintenance work and they need a reasonable period to vacate, which they now say is five years notice.
- [9] It appears to be common ground that the defendants have little money and it will be difficult for them to move and find and pay for alternative accommodation.

The law on applications for urgent interim relief

- [10] On an application of this kind the plaintiff must show that he has an arguable case and that the balance convenience favours the making

of the order sought. Having considered those matters the Court will stand back and ask where the overall justice of the case lies.

- [11] Very often it will be better to order a prompt hearing to determine the dispute once and for all than to grant interim relief before trial.

Is there a serious question to be tried?

- [12] The plaintiff has established a serious question to be tried. There is no dispute that he is the owner of the house and Mr. Fakahua acknowledged that he is entitled to possession of the house subject to payment of a sum the defendants claim to be owed for maintenance and a reasonable period of notice.

Balance of convenience

- [13] The plaintiff's application is based on the state of disrepair of the house and the non-payment of rent. The plaintiff has allowed the house to remain in the possession of the defendants without requiring repair or maintenance work to be done (or at least there is no evidence that he has required such work) from at least 2004 (the defendants say in 2000). On his evidence the defendants have not paid rent since 2007/2008 (the defendants say they have never paid rent). Having allowed this situation to continue for years the plaintiff cannot now expect the Court to grant him urgent relief. Furthermore, it seems very unlikely that the house will suffer significant damage between now and any hearing.

- [14] From the defendants' perspective the granting of an immediate order of eviction will cause them significant hardship. They have been living (apparently rent free) in the house for some years and I understand that they have no other home to go to and little ability

to pay rent. In those circumstances the balance of convenience favours the defendants.

Overall Justice

[15] Looking at the overall justice of the case it appears that the plaintiff's case is strong. On what is presently before the Court the defendants' position that they are entitled to 5 years notice to vacate will be difficult to justify as will an argument that they are entitled to remain in the house until they are paid for maintenance work they have undertaken. In this regard, it is noted that there is no evidence that they were asked to do work and they say they have not paid rent.

[16] These matters weigh in favour of granting the order sought but fortunately the Court may be able to offer an urgent hearing date. On balance I have decided the best course, rather than to grant the order sought, is to have the case heard on an urgent basis.

The result

[17] The plaintiff's application for an interim order for eviction is dismissed. I consider the balance of convenience favours the defendants and whilst their defence does not appear strong I prefer to have the case dealt with on an urgent basis than risk causing unnecessary hardship by making an immediate order for eviction.

[18] The defendants should note that this decision is not to be taken to mean that at the trial of this case they will not be ordered to vacate the house. At the present time all the Court is dealing with is the application for interim orders.

[19] The case is apparently going to take one day to hear. I adjourn the case to be called for mention before me on Friday 27 March 2015 at 9am for a date of hearing to be fixed.

[20] There will be no order for costs on this application.

NUKU'ALOFA: 25 March, 2015.



**O G Paulsen
LORD CHIEF JUSTICE**

**N. 'Inafo
25/3/2015**