

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

Solicitor General
01/06/15
Scan, email
of file.
CV 24 of 2015

BETWEEN: MA'ASI TAUELANGI
- **Plaintiff**

AND: VILISONI PAUL HEMALOTO aka
PAU'U HEMALOTO
- **Defendant**

Mr. S. T. Fakahua for the plaintiff
Mrs. F. Vaihu for the defendant

Dealt with on the papers.

R U L I N G

[1] This case is a dispute of ownership of a tractor. Whilst I make no final findings of fact at this early stage it appears that the tractor was purchased in New Zealand by the

plaintiff and his brother, a Roman Catholic priest in New Zealand, but paid for by the defendant. The defendant says that he paid for the tractor on the understanding that it would be used to grow crops here in Tonga and the plaintiff was to send him two containers of food to sell in New Zealand by way of reimbursement.

[2] The tractor was shipped to Tonga in or on October 2013. Sometime later (it is not clear when) the defendant moved to Tonga and saw that the tractor was not being used and he was unhappy that he had not received reimbursement. As a result he took the tractor (the plaintiff says under false pretences) and is now using it for planting crops and for a village project. The defendant argues that the ownership of the tractor was not to pass to the plaintiff until he (the defendant) had been paid.

[3] When the plaintiff commenced this proceeding he included an application for an ex parte interim injunction for the return of the tractor. I required that the matter be set down on notice and the papers were served on the defendant who

filed a statement of defence and affidavits in opposition to the injunction application.

[4] When the injunction application came before me on 15 May 2015 Counsel agreed that I could deal with it on the papers and issue a ruling in due course.

[5] The principles upon which the Court will act on applications for interim injunctions are well known. The purpose of an interlocutory injunction is generally to maintain the status quo until the parties' rights can be determined. The applicant must show that there is a serious question to be tried (in the sense that the applicant has made out a prima facie case) and that the balance of convenience favours the granting of the injunction. This enquiry requires the Court to look at the impact on the parties of a granting or a refusal of an order. If it can be shown that an applicant would be adequately compensated in damages and will suffer no irreparable injury if an injunction is not granted that is an important factor against the making of an order.

[6] In this case I am satisfied that the plaintiff has shown a serious issue to be tried as to the ownership of the tractor.

[7] As to the balance of convenience, it seems to me that the parties have a common interest. The plaintiff in his affidavit has stated that his main concern is the security of the tractor and to ensure that it is not sold or transferred to any other person. He is keen too to ensure that no damage is done to it by the removal of parts and the like. For his part, the defendant has the use of the tractor and so one would not expect that he would wish to dispose of it or damage it in anyway.

[8] In those circumstances I consider that the balance of convenience favours granting an injunction so that the tractor is protected but without causing either party hardship. I set out below the terms of the order I will make.

[9] I note also that the dispute between the parties appears to be one that can be resolved at a hearing in very short order. I believe that there will be time available to deal with this

case in July 2015. When the case is next called before the Court Counsel are to be in a position to agree to timetabling orders for all interlocutory steps and the hearing.

The result

[10] I make the following orders:

[10.1] Until further order of this Court the defendant, his employees, agents or anyone on his behalf are not to sell, transfer, encumber or depart with possession or ownership of the tractor that is the subject of this proceeding and he is to maintain the tractor in its present state and condition at his own expense.

[10.2] Costs on the plaintiff's application for injunction are reserved.

[10.3] This case will be called for mention at 9am on 29 May 2015.

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A handwritten signature in blue ink, appearing to read "O.G. Paulsen", is written over the seal.

O.G. Paulsen

NUKU'ALOFA: 21 MAY 2015

LORD CHIEF JUSTICE